

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

AARON WILSON GARNER .
vs. . G-07-CV-221
BP AMOCO CHEMICAL COMPANY .
BP AMOCO POLYMERS, INC., .
BP CORPORATION NORTH .
AMERICA, INC. .
.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE KENNETH HOYT
UNITED STATES DISTRICT JUDGE
DAY 12 OF 13

A P P E A R A N C E S:

FOR THE PLAINTIFFS:

Anthony Buzbee
Sean O'Rourke
Peter Kelley Taaffe
Nick Simon
The Buzbee Law Firm
600 Travis Street
Suite 7300
Houston, Texas 77002

Gabe Vick
Arnold & Itkin, LLP
1401 McKinney Street
Suite 2550
Houston, Texas 77010

Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

- - - - -

1 A P P E A R A N C E S: (Continued)

2 FOR THE DEFENDANTS:

3 Jim Galbraith
4 Lyle Courtney
5 Anthony Brown
6 April Marburger
7 McLeod Alexander Powel & Apffel
8 PO Box 629
9 Galveston, Texas 77553

7 OFFICIAL COURT REPORTER:

8 Cheryll K. Barron, CSR, CM, FCRR
9 U.S. District Court
10 515 Rusk Street
Houston, Texas 77002

11 ALSO PRESENT:

12 Ken Panozzo

13 - - - - -

P R O C E E D I N G S

(Jury not present)

THE COURT: Please be seated. Let me ask first how the exhibit list challenge is coming.

MR. O'ROURKE: Very well, your Honor. We've only got one issue in dispute on the plaintiffs'. We've agreed to everything else.

THE COURT: All right. Who's speaking for you --

MR. COURTNEY: We're still working on ours, your Honor; but I have --

THE COURT: Is that true, that you have one issue with the plaintiffs' side?

MR. COURTNEY: That is correct.

THE COURT: Okay. Go ahead. What about the defense, now?

MR. COURTNEY: We're still working on it. We have, I think, maybe five minutes; and we'll be done with it.

THE COURT: Okay. Go right ahead. Just let me take a look at what I have here in the charge. I'm looking at the charge.

Okay. Let's see.

(Sotto voce discussion at bench with court staff)

THE COURT: All right. Let me look at your exhibit list for the plaintiff.

Direct me now to the portion that you have a

10:33 1 problem with.

2 MR. O'ROURKE: Well, your Honor, do you have a copy of
3 the fourth amended --

4 THE COURT: I've got what you filed last night.

10:33 5 MR. O'ROURKE: Great. Great. We managed to go
6 through and we've withdrawn a few additional things and we've
7 also -- they've agreed to allow a few things in, and there was
8 the one issue regarding the witness statements that are
9 Exhibits 247 to 260.

10:33 10 THE COURT: 247 to 260. All right. What is the --
11 what is it? You want to offer them into evidence?

12 MR. O'ROURKE: Yes, your Honor.

13 THE COURT: Are these the plaintiffs' or just other
14 witnesses?

10:34 15 MR. O'ROURKE: These are other witnesses, your Honor.

16 THE COURT: All right. What's the objection?

17 MR. COURTNEY: Hearsay, your Honor.

18 THE COURT: Certainly these would be hearsay. My
19 question then would be whether or not these exhibits -- is
10:34 20 there a disagreement as to whether or not these exhibits were
21 utilized by plaintiff and/or defendant without objection during
22 the course of the testimony in the case.

23 MR. O'ROURKE: They were used throughout the case and
24 without -- these are the witnesses statements that were
10:34 25 referred to multiple times to directly confront their witnesses

1 saying that they didn't have any knowledge in their
2 investigation of people passing out or throwing up. That's why
3 they were used to show that either they didn't look or chose to
4 ignore these statements. And they were referred to constantly
5 by both sides, your Honor.

6 THE COURT: Okay. And your objection would be?

7 MR. COURTNEY: It's still hearsay, your Honor.

8 THE COURT: Hearsay.

9 MR. O'ROURKE: And, your Honor --

10 THE COURT: Are there portions of these exhibits that
11 are -- that address issues that are not already before the
12 panel?

13 In other words, is there something that if they
14 were -- that if it were redacted it would make it less of a
15 problem for the defense?

16 MR. COURTNEY: I'm not sure.

17 THE COURT: Or is your objection just generally these
18 are --

19 MR. COURTNEY: It's hearsay, Judge. It's -- these are
20 the same kind of statements like Jerry Duke, the statement you
21 wouldn't let in a couple of days ago.

22 THE COURT: Yeah, but that's for a different reason.

23 MR. COURTNEY: These were taken during the same
24 course.

25 THE COURT: Correct.

10:35 1 MR. COURTNEY: So, it's still a hearsay.

2 MR. O'ROURKE: And, your Honor, there's -- I mean,
3 technically, they're not hearsay since they're not being
4 offered for the truth of the matter that they're saying. What
10:36 5 we're offering them for and the reason why they came in during
6 this trial is because their witnesses say, "As a part of our
7 investigation, we didn't know that people were complaining of
8 throwing up or passing out."

9 Well, these -- these are employee interviews that
10:36 10 were a part of their investigation, which should have -- and
11 they say they did consider during their investigation; and it
12 goes right to -- to disproving that point.

13 So, it's not necessarily to prove that somebody
14 did pass out, that that's true. What it's going to show is
10:36 15 that they told BP they passed out, and it goes to knowledge.
16 And that's why it's relevant; and that's why it's technically
17 not hearsay, your Honor.

18 THE COURT: I'm going to overrule the objection and
19 admit it. And I will instruct the jury that Exhibits 247 to
10:36 20 260 are not admitted for the purposes of the truthfulness of
21 the statements but to simply provide notice to BP of a
22 condition that the plaintiffs and others were complaining
23 about.

24 MR. O'ROURKE: And, then, your Honor, if we could -- I
10:36 25 think maybe the best way to proceed would be to go through the

10:36 1 rest of this fourth amended exhibit list and let you know what
2 has been withdrawn and what has been admitted.

3 THE COURT: Well, the document will speak for itself
4 because we're going to file it.

10:37 5 MR. O'ROURKE: Okay. Well, since we filed it last
6 night, we've worked to iron out some other issues. So, they've
7 agreed --

8 THE COURT: I see.

9 MR. O'ROURKE: -- they've agreed to let some things
10 in; and we've agreed to withdraw some other exhibits, your
11 Honor.

12 MR. COURTNEY: How about at noon, or after lunch, we
13 just resubmit a new list?

14 THE COURT: Well, I don't want to have the jury
10:37 15 sitting on the runway, waiting on a list. So, let me ask you,
16 regarding the fourth amended -- I'm trying to understand what
17 you're saying.

18 MR. O'ROURKE: Sure.

19 THE COURT: Regarding the fourth amended exhibit list,
10:37 20 you've indicated to me all those exhibits that have been
21 admitted and, whether over objections or not, they're indicated
22 as having been admitted.

23 MR. O'ROURKE: Yes, your Honor.

24 THE COURT: There's certain exhibits that have been
10:37 25 withdrawn and --

10:37

1 MR. O'ROURKE: Correct.

2 THE COURT: -- I know there's a lengthy -- maybe part
3 of that is reflected in the exhibit list itself.

4 MR. O'ROURKE: Correct.

10:37

5 THE COURT: Now, taking this document as a completed
6 document now, having ruled on this portion --

7 MR. O'ROURKE: Sure.

8 THE COURT: -- what is it that needs to be corrected
9 or brought to the Court's attention?

10:38

10 MR. O'ROURKE: Gotcha. Your Honor, Exhibit 13.

11 THE COURT: Let me just get there.

12 All right. Thirteen?

13 MR. O'ROURKE: Defendants have agreed that that should
14 be admitted.

10:38

15 THE COURT: All right.

16 MR. O'ROURKE: Exhibit 37, we're now withdrawing.

17 THE COURT: Thirty-seven. Okay.

18 MR. O'ROURKE: Skipping on to 100 to 102 -- 100, 101,
19 102, those are also being withdrawn.

10:38

20 THE COURT: 101 and 102 or all three?

21 MR. O'ROURKE: All three, your Honor, 100, 101, and
22 102.

23 THE COURT: All right.

24 MR. O'ROURKE: Exhibit 172, 173, and 174 are all being
25 admitted.

10:38

10:38 1 THE COURT: 172, 173, and 174, admitted.
2 MR. O'ROURKE: As well as 176, 178 --
3 THE COURT: All right.
4 MR. O'ROURKE: -- and 179.
10:38 5 THE COURT: All right.
6 MR. O'ROURKE: Those are all admitted.
7 Number 211, your Honor, is going to be withdrawn.
8 THE COURT: 211, previously admitted or agreed to but
9 withdrawn now?
10:39 10 MR. O'ROURKE: Yes, your Honor.
11 THE COURT: Okay.
12 MR. O'ROURKE: And 220 is going to be withdrawn.
13 THE COURT: Okay.
14 MR. O'ROURKE: 222 is admitted.
10:39 15 THE COURT: All right.
16 MR. O'ROURKE: And then, with the Court's ruling on
17 247 through 260, they're admitted --
18 THE COURT: That completes -- all right. Very good.
19 All right. Thank you.
10:39 20 MR. O'ROURKE: Thank you, your Honor.
21 THE COURT: And, yes, you can give us a clean version
22 of that after lunch because we'll file the cleaned up version
23 but I'll need to maintain this one for crosschecking.
24 MR. COURTNEY: Certainly, your Honor.
10:40 25 THE COURT: All right. Did you-all get a copy of the

1 charge?

2 MR. BROWN: Just now. We didn't realize we had it.

3 THE COURT: Oh, okay.

4 All right. Gentlemen, let me do this so that we
5 can make sure we're focused on the same areas of concern that
6 we focused on while in chambers. What I have done is -- I need
7 to make sure I've got counsel's attention.

8 MR. BROWN: I'm listening.

9 THE COURT: All right. You can do that.

10 What I have done is I have taken the plaintiffs'
11 restructured portion -- because what they did is they
12 incorporated the instructions that I had given to you-all and
13 then modified them to their satisfaction and now we've talked
14 about some changes to those. So, if you would take a look at
15 your -- I just want to point out where they are.

16 If you would look at your jury charge, the one
17 that I've just given to you, under the "Contentions of Parties"
18 section, you would see that that change has been
19 incorporated -- or reflected in the top portion of the first
20 paragraph.

21 You would also see in the second paragraph the
22 reflection of those that the defendant requested. And you
23 would see the reincorporation of the (c) and (d) portions that
24 the defendant initially had in -- or that I had in my
25 instruction.

1 We're still on Page 4. At the bottom of Page 4,
2 you see that the term "contractor" and the doctrine of
3 respondeat superior have been removed.

4 On Page 5 you see "Definitions" has been
5 incorporated. At "proximate cause," you'll see the sole -- or
6 single sentence, being the sentence that concludes that
7 portion. And that has been taken care of.

8 Under "Negligence," you'll see that I did
9 incorporate the standard definition of "negligence," deleting
10 what I had in there at the beginning.

11 Under "Gross Negligence," you'll see that we --
12 let me make sure. Yeah. Under "Gross Negligence," you'll see
13 that I broke out -- or I at least broke that up into two
14 paragraphs. And then the, quote, "the actor" has been replaced
15 with "BP."

16 And that last paragraph ends with "welfare of the
17 plaintiffs," as I indicated. And I deleted that sentence that
18 says, "If a plaintiff does not establish," that's out.

19 Now, here's an area that you both want to take a
20 look at because it's one that we might have to struggle a
21 little bit with. But if you look at the bottom of Page 7,
22 where it says "Interrogatories," there is an objection -- or
23 will be an objection by BP as to that section. But what I need
24 is a definition -- or needed was a definition of "control."

25 I went back in and re-engineered the (b) portion

1 because the plaintiffs' allegations of negligence relate to
2 maintenance or failure to maintain and properly maintain the
3 facility and plant. It doesn't have anything to do with an
4 instrumentality as I had put it in the charge.

5 So, if you -- on Page 7, at the bottom it says,
6 "(b), that the cause of the accident (i.e., BP's -- maintenance
7 program) was under the management and control of BP at the time
8 of the negligence, if any, causing the accident that probably
9 occurred."

10 And then, "'Control' means that BP controlled the
11 time and manner of the maintenance of its facility," because
12 that's really what this case, from the plaintiffs' perspective
13 in part, is about.

14 Now, we can argue about that; but I want to bring
15 that to your attention specifically as to how I've reworded
16 that. Because it's not like an automobile accident, an
17 automobile that went out of control and that becomes the
18 instrumentality. We're talking about, from what I understand,
19 a release that was a result of lack of maintenance or poor
20 maintenance. It's a part of a scheme, a lack of maintenance or
21 poor maintenance as a result. So, we'll talk about that if we
22 need to and take objections.

23 Beyond that, I believe all of the other -- just
24 double-check -- all of the other changes that we did to the
25 interrogatories have been reflect -- or are reflected, should I

1 say.

2 And that Interrogatory Number 4 individualizes
3 the claim for damages as it relates to punitive damages.

4 So, now, go ahead and reflect on that; and you
5 can certainly give me your appreciation for what I think the
6 changes --

7 MR. BUZBEE: Your Honor, with regard to what you
8 focused in on on "control," I think I would respectfully
9 suggest the word should be "timing" rather than "the time." We
10 should say, "the timing and manner of the maintenance"; and
11 that's the only change I would suggest to you.

12 THE COURT: What page was that on? Seven?

13 MR. TAAFFE: Yes, your Honor.

14 MR. BUZBEE: And with that, your Honor, I think that's
15 sufficient from our perspective.

16 THE COURT: There is another error that I made that I
17 think I marked, and I need to bring it to your attention. And
18 then I'll hear from the other side on this.

19 Interrogatory Number 1 -- and there is another
20 change. Interrogatory Number 1, I take "contractor" out.
21 That -- and I think that's the only place. I'll double-check,
22 but I believe --

23 MR. BROWN: I think it is.

24 THE COURT: Yeah. So, I wanted to make sure I brought
25 that to your attention, as well.

10:47 1 Now, as it relates to Page 7, counsel?

2 I know you haven't had a chance to think about
3 it. Do you want to think about what I've said?

4 MR. BROWN: Well, just at the outset, I think that the
10:47 5 "res" in "res ipsa loquitur" has to be a thing and it has to be
6 a place. I mean, this is -- a program? That's -- I just don't
7 think that an activity or a procedure --

8 THE COURT: But that's where the duty lies. The duty
9 lies in the activity itself. So, as far as negligence is
10:47 10 concerned, when a person has a duty to perform and fails to
11 maintain that duty, that failing becomes the instrumentality,
12 if that's your argument.

13 MR. BROWN: Okay.

14 THE COURT: Or a failure of that duty becomes the
10:47 15 basis for the negligence claim.

16 MR. BROWN: Under -- okay. I would just note that the
17 definition of "control" under Chapter 95 to the --

18 THE COURT: Yeah, I can't give that definition. I
19 have to structure it to the facts of this case. And I do
10:48 20 recognize what you're saying.

21 MR. BROWN: And for purposes of the record --

22 THE COURT: Because, see, 95 goes to facility, in
23 terms of control of a piece of real estate, a piece of
24 geography. We're not talking about control -- at least I think
10:48 25 the plaintiff is not talking about control of a facility.

1 They're talking about a control of a program, a duty owed under
2 the maintenance program. And, so, I'll permit your objection
3 at that point.

4 MR. BROWN: The only trouble is, your Honor, is will I
5 have time logistically to work out a way to tender an
6 alternative definition?

7 THE COURT: Yes. That's why I said that I know you
8 haven't had a chance to think about it. But I wanted you to be
9 able to see it, and certainly I want to hear what you have to
10 say now just in case it refines my thinking.

11 But at the same time, I think what we'll probably
12 end up doing -- we're going to check and see if our jury is
13 present. But we probably will just go ahead and send them to
14 lunch early. After all, they just had breakfast. But we'll
15 probably just get them to take an early lunch -- let's go ahead
16 and do that.

17 *(Sotto voce discussion at bench with court staff)*

18 THE COURT: I won't give you more than 10 minutes'
19 rebuttal. But we're talking two and a half hours of time this
20 afternoon. So, I would say 1:00 o'clock. Is that -- that
21 would give us time to get it all in to them, for them to get
22 into the jury room, select a foreperson, and at least commence
23 deliberations and have a full day ahead of them tomorrow. So,
24 1:00 o'clock?

25 MR. BUZBEE: (Nodding head.)

1 THE COURT: 1:00 o'clock?

2 MR. BROWN: Just before that, your Honor, would you
3 might want us to come in and do the charge conference?

4 THE COURT: Well, I'm going to take your objections --
5 except as to this part, I want to go ahead and take your
6 objections to the charge.

7 MR. BROWN: Oh, on the record?

8 THE COURT: And you reserve the right to certainly
9 make an alternative or correction in this area. So, what I
10 would like to do is take your objections to the charge.

11 Now, you don't have to repeat your -- if they're
12 complete -- and I am looking at your filing from last night,
13 BP's objections to the Court's proposed charge. If these are
14 complete, then I need to simply say that the objections are
15 overruled and those -- and that the proffers made of
16 interrogatories and definitions are refused except to the
17 extent that the Court has adopted and incorporated them into
18 its proposed and presented charge.

19 Now, that takes care of this.

20 MR. BROWN: Yes, your Honor. And for the record, I
21 filed that with the Court this morning. I guess we can file a
22 duplicate on the electronic system.

23 THE COURT: Well, if you -- you filed a hard copy on
24 4? Or you just brought this and gave it to me?

25 MR. BROWN: I brought that and gave it to you.

1 THE COURT: Oh, okay. So, this does need to be filed.
2 You can file it right here.

3 MR. BROWN: Okay.

4 THE COURT: You can give it to Kathy here in the
5 courtroom, the case manager in the courtroom. And she can go
6 ahead and file it, and the record will reflect the filing as
7 well as my ruling. Now, outside of this document -- so, let me
8 say it like this. That's my ruling. All right?

9 MR. BROWN: Okay.

10 THE COURT: Okay. So, the record reflects that.

11 Now, outside of this document, there are some
12 concerns that you have; and we'll take those up in just a
13 minute.

14 The plaintiff has also filed a proposed jury
15 charge, and the Court's statement in that regard is the Court
16 would overrule the objections and refuse proposed definitions
17 and interrogatories or changes except to the extent that the
18 Court has incorporated any changes requested in the Court's
19 instructions to the jury. Now, that takes care of your
20 instructions, as well.

21 And let's start with the plaintiff now. Beyond
22 what I have already done and what you know is present and
23 reserving the right to make your arguments as it relates to the
24 res ipsa section of this, do you have other objections you need
25 to make?

1 MR. BUZBEE: No, sir.

2 THE COURT: All right.

3 MR. BROWN: Your Honor, just to protect myself and
4 make sure under the record, I renew the objections set out in
5 the pleading, which we will file with the clerk.

6 And also for the record, given the fact that we
7 object to Interrogatories Numbers 1, 2, and 3, based on the
8 fact that there is no evidence or, alternatively, that they are
9 legally and factually -- there's legally and factually
10 insufficient evidence to support those and that they
11 incorrectly state the legal standards, I would tender our
12 proposed interrogatories for the Court to consider.

13 THE COURT: Are those interrogatories already included
14 in -- in the -- in BP's --

15 MR. BROWN: Yes.

16 THE COURT: -- objections -- what is it called --
17 objections and proposed charge?

18 MR. BROWN: Yes, your Honor.

19 THE COURT: All right. Then you don't need to
20 re-tender them. Just tender that document to the case manager
21 at this time.

22 MR. BROWN: Understood.

23 And that also includes our proposed
24 interrogatories under Chapter 95, which I understand the Court
25 will not submit?

1 THE COURT: Correct.

2 MR. BROWN: Okay.

3 THE COURT: All right. We'll need that filed as the
4 objections and requests of the -- of BP for instructions and
5 definitions and interrogatories.

6 And the Court has previously and will restate its
7 ruling in relationship to that, and that is that they are
8 overruled and they are refused except to the extent
9 incorporated.

10 MR. BROWN: And for the record, I'm tendering a
11 duplicate copy of what the Court has been reading to the clerk
12 for filing.

13 THE COURT: Thank you.

14 All right. Now, where are we in terms of any
15 other objections or corrections to the -- save the res ipsa,
16 are there other objections or corrections that we have not
17 addressed for the defense?

18 MR. BROWN: I do not believe so, your Honor.

19 THE COURT: All right. Then, with that reservation,
20 the Court is concluding the objections and corrections and
21 proposals for the instructions to the jury; and we'll go back
22 to the exhibit team.

23 MR. COURTNEY: We're ready, your Honor.

24 THE COURT: All right. I don't believe I have a copy
25 of what you are going to be talking from or about.

10:55 1 MR. COURTNEY: Your Honor, we have a marked up copy
2 that we're going to clean up over lunch.

3 THE COURT: Okay. Hold on just one second. Make sure
4 I'm not throwing away some goodies here. Try to clean up a
10:55 5 little bit here.

6 What you've handed to me are BP's third amended
7 exhibit list, and let's keep it at that. Let's don't change it
8 to a fourth when you go back and clean it up. All right?

9 And the report reflects a deletion -- reflects
10:56 10 that certain exhibits have been deleted and certain have been
11 admitted; and that's what we're going to go through now,
12 correct?

13 MR. COURTNEY: Correct, your Honor.

14 THE COURT: All right. So, let's see. Let's hear
10:56 15 where you have trouble or difficulty. Is there anything that
16 you have objection to -- I'll tell you what. Tell me where the
17 trouble is, and then we'll go from there.

18 And give us your name from the record, please.

19 MS. MARBURGER: I'm sorry, your Honor. My name is
10:56 20 April Marburger.

21 THE COURT: All right.

22 MS. MARBURGER: And for the record, I don't think we
23 have any trouble. I think we resolved everything. So, would
24 you like us to start with what we've withdrawn?

10:56 25 THE COURT: Yes, Exhibit -- what is that?

1 Seventy-six?

2 MS. MARBURGER: Yes, your Honor. We withdraw
3 Exhibit 76. We withdraw Exhibit 192.

4 THE COURT: Okay.

5 MS. MARBURGER: We withdraw Exhibit 292A.

6 THE COURT: Hold on just one second. Let me see what
7 happened here at the bottom. 292?

8 MS. MARBURGER: A, yes, your Honor, 292A.

9 THE COURT: All right.

10 MS. MARBURGER: 293.

11 THE COURT: Okay.

12 MS. MARBURGER: We withdraw Exhibit 2013. We withdraw
13 Exhibit --

14 THE COURT: 2013?

15 MS. MARBURGER: Yes, your Honor. And Exhibit 2015.

16 THE COURT: All right.

17 MS. MARBURGER: Exhibit 2101.

18 THE COURT: Uh-huh.

19 MS. MARBURGER: Exhibit 2103.

20 THE COURT: All right.

21 MS. MARBURGER: Exhibit 2105, 2106, 2107, 2110, 2201.

22 THE COURT: Okay.

23 MS. MARBURGER: 2202, 2206, 2211, 2319.

24 THE COURT: What's going to happen with 2305?

25 MS. MARBURGER: 2305? Your Honor, I don't believe --

10:58

1

MR. VICK: I think we agreed to admit that one, your Honor.

2

3

THE COURT: Okay. 2305. 2306 is in then, correct?

4

MS. MARBURGER: Yes, your Honor.

10:58

5

THE COURT: And 2308, 2310, 2312, those will be coming in?

6

7

MR. VICK: Yes, your Honor.

8

THE COURT: And, now, for 2319, that would be out; is that right?

9

10:58

10

MS. MARBURGER: Yes, your Honor.

11

I'm sorry. Just to make sure for the record, did we skip 2311? I believe he agreed that that's in, as well.

12

13

THE COURT: We did. That would be admitted. Okay.

14

10:58

15

2319. We withdraw 2323. We withdraw --

16

THE COURT: What about 2321; is that admitted?

17

MR. VICK: It's admitted.

18

THE COURT: Okay.

19

10:58

20

Exhibit -- well, I'm sorry. Let's start -- 2342, I believe Mr. Vick has agreed to allow that.

21

22

THE COURT: All right.

23

MR. VICK: Yes.

24

MS. MARBURGER: And the same with 2345?

10:59

25

THE COURT: Correct.

10:59

1

MS. MARBURGER: We withdraw Exhibit 2347.

2

THE COURT: Okay.

3

MS. MARBURGER: Next is Exhibit 2400. We withdraw

4

that exhibit. We withdraw 2401. We withdraw 2404, 2405.

10:59

5

THE COURT: Withdrawing that, as well?

6

MS. MARBURGER: Yes, your Honor.

7

THE COURT: Okay.

8

MS. MARBURGER: 2406, 2409, 2412, 2500, 2501, 2502.

9

And I believe counsel has agreed to 2503.

10:59

10

MR. VICK: Correct.

11

THE COURT: Is admitted. Okay.

12

MS. MARBURGER: We withdraw Exhibit 2507 and 2509, as

13

well as Exhibit 2602, 2605, 2606, 2607, and 2626.

14

2705 we withdraw, as well as Exhibit 2706, 2709,

11:00

15

2710. 2802 we withdraw, as well as 2804, 2807, 2808, 2811. We

16

withdraw Exhibit 2900, 2901, 2902.

17

And I believe counsel has agreed to 2904.

18

MR. VICK: That's correct.

19

THE COURT: All right.

11:00

20

MS. MARBURGER: We withdraw Exhibit 2905, 2906, 2907,

21

2908, and 2909.

22

THE COURT: All right. What is listed at the bottom

23

as a potential rebuttal exhibit, that has been admitted. Is

24

that correct?

11:00

25

MS. MARBURGER: Yes, your Honor.

11:01

1

MR. COURTNEY: Correct, your Honor.

2

MS. MARBURGER: And I believe, your Honor --

3

MR. COURTNEY: Did we skip these?

4

MS. MARBURGER: Yeah.

11:01

5

I think if we go back, your Honor, to exhibits that start with 2000, there was some that counsel and I agreed to that we didn't discuss originally.

8

THE COURT: All right. I'm there, I believe.

9

MS. MARBURGER: Okay. Exhibit 2001, we've agreed to that exhibit.

11:01

10

THE COURT: Admitted.

11

12

MS. MARBURGER: And 2002, we've agreed, 2003, as well as Exhibit 2300.

13

14

THE COURT: Let me get there. All right.

11:01

15

MS. MARBURGER: And then did we cover all these?

16

THE COURT: What about 2102?

17

MR. O'ROURKE: That's admitted.

18

MS. MARBURGER: Yes, your Honor.

19

THE COURT: Okay. And 2204 would be admitted, correct?

11:01

20

21

MR. O'ROURKE: Correct, your Honor.

22

THE COURT: Okay.

23

MS. MARBURGER: And then -- I apologize. I'm not sure if we went down 2301 yet.

24

11:01

25

THE COURT: Have not.

11:01 1 MS. MARBURGER: Okay. 2301, I believe counsel has
2 agreed.
3 MR. VICK: No objection.
4 MS. MARBURGER: 2302, 2304, '05, '06.
11:02 5 THE COURT: Yeah, we did those.
6 MS. MARBURGER: Okay.
7 THE COURT: How about '09?
8 MS. MARBURGER: '09?
9 MR. VICK: No objection to 09.
11:02 10 THE COURT: And '14, 2314?
11 MR. VICK: I think we went through those and agreed to
12 them.
13 MS. MARBURGER: Yes. Yes.
14 THE COURT: Okay.
11:02 15 MS. MARBURGER: And do you have the same for 2321,
16 your Honor?
17 THE COURT: Yes.
18 MS. MARBURGER: Okay.
19 THE COURT: Are we there?
11:02 20 MS. MARBURGER: Yes, sir.
21 MR. VICK: Yes, your Honor.
22 THE COURT: All right. Then, the remaining
23 exhibits -- and let me just say it like this for the record.
24 For both plaintiff and defendant, the -- the plaintiff -- the
11:02 25 fourth amended exhibit list will be the -- will be the official

1 record of the exhibits admitted by the Court and/or withdrawn
2 and for which no objection -- no additional objections have
3 been made.

4 BP's third amended exhibit list will be -- that
5 will be the official record representing the exhibits admitted,
6 reflecting exhibits withdrawn, and as well other -- other
7 exhibits that have been admitted or that were admitted today
8 and are reflected on the record and as well -- well, I think I
9 spoke to withdrawn. Yeah. Okay.

10 MS. MARBURGER: Thank you.

11 THE COURT: Now, as it relates to the documents,
12 themselves, that's the next task. And, so, you still need to
13 get that done; is that right?

14 MR. O'ROURKE: Well, we have our box ready to go.

15 MS. MARBURGER: And we do, as well, your Honor.

16 THE COURT: Okay. Have you-all peeked into each
17 other's box?

18 MS. MARBURGER: We have.

19 MR. O'ROURKE: We've checked back and forth.

20 MS. MARBURGER: With permission.

21 THE COURT: All right. You're going to have to sign
22 in blood that you both have reviewed each of the other's -- I
23 think we may have performed something somewhere -- each other's
24 exhibits and that you are agreeing that these are the, quote,
25 exhibits that can go back to the jury.

1 MS. MARBURGER: Yes.

2 MR. O'ROURKE: Yes.

3 THE COURT: All right.

4 MR. BROWN: Should we come back a little bit before

5 1:00 in order to just address our objection and tender on the
6 res ipsa --

7 THE COURT: No. You're going to have to come back a
8 lot before 1:00.

9 MR. BROWN: Oh, okay.

10 THE COURT: Because I've got to either get the
11 correction in the machine or take your objection on it. And
12 when I say "a lot," I mean probably, like, 12:30.

13 MR. BROWN: Sure.

14 THE COURT: So I'll have at least enough time to make
15 the correction on the record.

16 I provide generally to the jurors a copy of the
17 entire charge so they can read along with me. And they'll have
18 it for all purposes at that time.

19 I also will need to get a -- will have attached
20 to the back of it a certificate, which is not reflected on your
21 copies; but it will be reflected on the official original copy
22 saying, "We the jury make this unanimous verdict."

23 MR. BUZBEE: Okay. 12:30, your Honor?

24 THE COURT: 12:30. See you later.

25 MR. BUZBEE: Okay.

1 THE COURT: Oh, those who have signed off on the
2 exhibit list, before you leave, we need to get your signatures.

3 I'll tell you what, we'll get you at 12:30.

4 MR. COURTNEY: Judge, should we submit a revised
5 updated list that's not scratched out or are you okay with the
6 one --

7 THE COURT: No. I want you to submit a revised. I
8 mean, if you can get that done, fine. Because the one that you
9 have that you have given me is quite scratched up. It would be
10 better if the jury saw just a clean version without my
11 handwriting on it.

12 MR. COURTNEY: Okay. Very good.

13 THE COURT: So, can you get that ready for us by
14 12:30?

15 MS. MARBURGER: Yes, your Honor.

16 MR. COURTNEY: Yes, your Honor.

17 THE COURT: Okay. Good. Do you plan to submit a
18 cleaned up or different version back at 12:30, as well?

19 MR. O'ROURKE: Yeah. We're working on it right now,
20 your Honor.

21 THE COURT: Oh, good. All right. I just wanted to
22 make sure.

23 *(Recess taken from 11:06 to 12:39)*

24 *(Jury not present)*

25 THE COURT: Please be seated. Okay. Gentlemen, let

12:39 1 me tell you what I've done in terms of improving what I believe
2 to be the -- and placing in what I believe to be the
3 appropriate language in the -- in the charge itself on Page 7.
4 You can read it.

12:40 5 MR. BUZBEE: Your Honor, this phrase "exclusive
6 management," that's obviously something new and --

7 THE COURT: Yeah. I'm saying that I think to have
8 control, that might be -- I added that word.

9 MR. BUZBEE: I think that's more than what's required.

12:40 10 THE COURT: It may be, and that's why I asked you to
11 take a look at it. I know that "control" means essentially
12 that it has to be under its exclusive control, but management
13 control is certainly enough. I don't know of anybody else who
14 BP would claim is in charge of their maintenance and preventive
12:40 15 techniques program, let's call it, "techniques" meaning you
16 talk about it in terms of --

17 MR. BUZBEE: Maintenance and inspections?

18 THE COURT: Well, there's some instrumentations.
19 So --

12:41 20 MR. BUZBEE: Right.

21 THE COURT: -- that needed to be -- or should have
22 been in place, as you argued.

23 MR. BUZBEE: Correct.

24 THE COURT: And, so, I think you may be right about
12:41 25 the exclusive control -- exclusive management. I'm sorry.

1 MR. BUZBEE: Yes, sir. That would be my objection to
2 this, is I would strike those two words and just leave
3 "control."

4 THE COURT: What two words?

5 MR. BUZBEE: "Exclusive management."

6 THE COURT: Just say that maintenance was under the
7 control --

8 MR. BUZBEE: Yes, sir.

9 THE COURT: -- of BP?

10 MR. BUZBEE: Yes, sir.

11 THE COURT: Okay. Yeah, because "management" might
12 imply some other duties and responsibilities that are not
13 there.

14 All right. Counsel, you indicated you wanted to
15 look and think about it. You've seen what I've tried to do.
16 Now tell me what you want to do.

17 MR. BROWN: Your Honor, we object to the tender of
18 this instruction. We renew our objection that any instruction
19 under res ipsa, we contend that it should not be submitted
20 under Marathon Oil versus Sterner, the 1982 Supreme Court case
21 we discussed earlier.

22 THE COURT: All right.

23 MR. BROWN: Subject to that, we believe that this
24 specific instruction is not supported by the evidence. There's
25 no legally or factually sufficient evidence to support it and

1 that it improperly shifts the burden of proof to us and is an
2 incorrect statement of the law.

3 We are particularly concerned about the
4 definition of "control," which almost -- it almost requires
5 them to -- directs them on what answer they need to find. So,
6 we object to this; and we would just tender a very general --
7 if the Court is going to submit one, we tender to the Court
8 just a general straight Mobil -- Mobil Chemical instruction
9 that was --

10 THE COURT: Let me read it into the record, then.
11 What you've tendered as a supplementation to your previous
12 submissions is this; it would say as follows -- you have a copy
13 of it, counsel?

14 MR. BUZBEE: No.

15 MR. BROWN: I showed it to him.

16 THE COURT: Okay. I'm going to read it, and then
17 you'll hear it anyway.

18 "You are instructed that you may infer negligence
19 by a party but are not compelled to do so if you find that the
20 character of the accident is such that it would ordinarily not
21 happen in the absence of negligence and if you find that the
22 instrumentality causing the accident was under the management
23 and control of the party at the time of the negligence, if any,
24 causing the accident" -- and it should be "causing the accident
25 probably to occur." I believe you've got to have that "to" in

1 there.

2 MR. BROWN: Oh, yes.

3 THE COURT: And then the definition of "control" would
4 be, "'Control' means the owner must control the mode or method
5 of the contractor's" -- and there's a problem right there --
6 "contractor's work, and this control must extend to the
7 operative detail of the work being performed."

8 I think we're -- you're placing this in someone's
9 hands that is not responsible. And we're saying that somehow
10 the maintenance program, which is what the plaintiffs are
11 complaining about, is under the control of another person.
12 And, of course, we recognize that BP has contracted out its --
13 what do you call that program? Startup or --

14 MR. BUZBEE: "Turnaround."

15 THE COURT: Turnaround program. But that's not --
16 that is not the object of the plaintiffs' complaint.

17 MR. BUZBEE: Correct.

18 MR. BROWN: Based on that concern, Judge, we would
19 tender deleting the word "contractor" so it simply means that
20 the owner must control the mode or method of the work.

21 THE COURT: Well, what work are we talking about?

22 MR. BROWN: The --

23 THE COURT: See, that's the issue that you have. "The
24 mode and method of work," I don't have a problem with those
25 terms; but the mode and method of work is the very argument

12:44 1 that the plaintiffs complain is the preventive techniques; that
2 is, the instrumentalities that you would put out there, the
3 choice in when you maintain and how you maintain the facility,
4 that's what the -- so, the object of the instrumentality
12:44 5 problem now is no longer an animate object or -- I'm not saying
6 that right -- inanimate -- it's now inanimate. It's a program.

7 MR. BROWN: Okay. Well, then perhaps, your Honor, as
8 a final alternate offer, we would simply offer the straight
9 Mobil Chemical instruction with no definition of "control."

12:45 10 That would clearly be appropriate under Texas law, and that way
11 we don't have to worry about any possible error that might come
12 about as a result of the submission of a definition.

13 THE COURT: Say that again. You proposed what now?

14 MR. BROWN: Just completely omitting the definition of
12:45 15 "control," just leaving that first paragraph, which is the
16 straight language out of Mobil Chemical.

17 MR. BUZBEE: As I said, your Honor, first off, there
18 is -- it is undisputed that the timing and implementation of
19 preventive techniques and corrective measures at BP plant was
12:46 20 controlled. There's no evidence otherwise. So, as we put in
21 our brief, it shouldn't even be in there anyway. But if it's
22 going to be in there -- because it's an undisputed fact. If
23 it's going to be in there, then we got to take out this word
24 "exclusive" because --

12:46 25 THE COURT: Right, I agree with that. But he's --

1 MR. BUZBEE: I mean, he just keeps arguing these
2 fall-back positions; but the bottom line is, I think, the
3 instruction, if it's going to be in there, is correct if you
4 take out "exclusive." And he continues to fall back and -- you
5 know, I guess like a member of the military.

6 THE COURT: Well, he wants to take out the definition
7 of "control" where it says, "'Control' means that BP controlled
8 the timing and implementation of any preventive techniques,"
9 etcetera.

10 Certainly, I think that if that's going to stay
11 in there, it needs to change to, "'Control' means that BP must
12 control the timing and implementation of any preventive
13 techniques," as opposed to past tense. I certainly think it
14 needs to be stated in such a way that that's what they must
15 find. In terms of determining these issues, they must
16 determine that control is under BP's -- that BP controlled the
17 timing and implementation and not tell them that it is
18 controlled in the past tense.

19 "'Control' means that BP must control the timing
20 and implementation of any preventive techniques," that's what
21 they need to find -- or utilize that definition. That's the
22 way I think I'll submit it, and your objections -- your
23 objection and submission is refused.

24 We -- if you want to place this separately there,
25 you can; but it's -- I've read it into the record; and that's

1 what I am refusing, your res ipsa loquitur proposed
2 instruction.

3 MR. BROWN: Okay. I would request that it be tendered
4 to the clerk for filing with the papers.

5 THE COURT: All right.

6 MR. BUZBEE: Do you intend to strike the word
7 "exclusive," your Honor?

8 THE COURT: The words that will come -- the way this
9 will be worded now, it will say, "was under the control of BP
10 at the time of the negligence, if any, causing the accident
11 that probably occurred."

12 MR. BUZBEE: Okay. We're good with that.

13 MR. BROWN: "Probably"?

14 THE COURT: I think I need to say "allegedly."

15 MR. BROWN: "Allegedly."

16 THE COURT: Because, again, the other case, there was
17 no -- no dispute that an accident had occurred. Okay?

18 MR. BUZBEE: Yes, sir.

19 THE COURT: And we will provide you with clean copies
20 of that, of the charge itself, in just a minute.

21 *(Sotto voce discussion at bench with court staff)*

22 THE COURT: Now let's deal with another matter that I
23 did not address. The plaintiffs filed a motion for judgment as
24 a matter of law on the defendant's affirmative defenses. Have
25 you had a chance to review that? Who will respond to that?

1 MR. COURTNEY: I guess I can, your Honor.

2 THE COURT: All right. Here's the affirmative
3 defenses that are identified by the plaintiff. The second --
4 and if you are looking at their motion, what they call the
5 second defense is contributory negligence.

6 MR. COURTNEY: Judge, there is none in this case --

7 THE COURT: On that?

8 MR. COURTNEY: -- as a general --

9 THE COURT: Yeah. And an unavoidable accident?

10 MR. COURTNEY: Same.

11 THE COURT: And third-party negligence?

12 MR. COURTNEY: We would submit that this does apply.
13 There is evidence that the source came from off site as
14 suggested by the wind data, personal observations from the rail
15 yard, the wind was from the southeast. And, so, we would stand
16 by that one, please.

17 THE COURT: That would be the -- what number is that?
18 That's called the fourth --

19 MR. COURTNEY: Third-party negligence.

20 THE COURT: That's the fourth and fifth defenses,
21 third-party negligence?

22 MR. COURTNEY: Correct.

23 THE COURT: All right. What is called the fourth and
24 fifth defenses.

25 And, then, as relates to the 22nd?

1 MR. COURTNEY: Preexisting conditions, we heard
2 evidence from at least eight of the plaintiffs that they had
3 preexisting conditions, including Mr. Fuentes, Munoz,
4 Jefferson, Mays, Cantu, Pearson, Taylor, and Ms. Claudio. So,
5 we feel that that one should remain.

6 THE COURT: And the 23rd is the plaintiffs' released
7 claims.

8 MR. COURTNEY: There's no claims --

9 THE COURT: Okay.

10 MR. COURTNEY: -- for this trial group, of release.

11 THE COURT: And 24 is Chapter 95. I'm going to -- 24
12 is Chapter 95. I will grant that because I've already done
13 that in the record.

14 Now, backing up, 23, plaintiffs' release, that's
15 granted. I'm sorry. That would be granted, right?

16 MR. COURTNEY: Of course.

17 THE COURT: Yeah. And 22 is the preexisting
18 conditions. I'm going to deny that. That's an argument. When
19 I say "argument," I'm going to deny their motion to -- that is,
20 the defendant's motion -- to strike that as an argument to be
21 made.

22 I don't know that it's an affirmative defense
23 that you need to prove. It is simply a disputed fact issue as
24 it relates to whether or not the jury could consider
25 aggravation and all that kind of thing as opposed to

1 preexisting conditions. So, that would be denied as to the
2 defendant's motion -- I'm sorry, the plaintiffs' motion.

3 Backing up now to the fourth and fifth, having to
4 do with third-party negligence, I think that in terms of the
5 plaintiffs' affirmative duty, the plaintiff has to -- and I
6 don't want to say this as a matter of law. I want to say it as
7 a matter of appreciation.

8 I think the plaintiff has to eliminate the
9 possibility or at least make the possibility of a third-party
10 liability issue go away; in other words, this did not come from
11 off site, it came on -- it came on the plant or was on the
12 plant or was permitted on the plant as a result of lack of
13 maintenance.

14 So, the, quote, release or whatever it was that
15 created this odor event, I'm not sure there's any evidence from
16 the defense, if this is an affirmative defense, that it came
17 off site. That's the problem I have with granting it and
18 denying it.

19 MR. TAAFFE: Yeah, your Honor. I'd just say we've
20 heard extensively about their claim that it came from off site,
21 but I haven't heard a shred of evidence that they've identified
22 some other third-party's negligence that caused this alleged
23 offsite --

24 THE COURT: Right. And you can argue that it came off
25 site, without having the burden of proving, because it seemed

1 to me that when you argue that as an affirmative defense you've
2 got to produce a preponderance of the evidence to show that
3 there was, in fact, either an identifiable source or that you
4 eliminate that it was on your site. Now, you haven't
5 eliminated it except by testimony, just as they haven't
6 eliminated off site except by testimony. So, it's a
7 credibility issue.

8 Now, what does that mean? That means for the
9 fourth and fifth, I'm going to deny them as affirmative
10 defenses. In other words, I'm granting their motion. But that
11 doesn't prevent you from arguing that somebody else caused
12 this.

13 Okay? All right. I think I got it right. Thank
14 you, gentlemen.

15 MR. TAAFFE: Thank you.

16 MR. COURTNEY: Thank you.

17 THE COURT: Did you file this motion this morning, or
18 did you just hand it to me?

19 MR. TAAFFE: This is the motion for judgment as a
20 matter of law?

21 THE COURT: Right.

22 MR. TAAFFE: That was filed last night by E-filing.

23 THE COURT: Last night. All I'll need to give you is
24 the order, then.

25 Well, we've got about five minutes. And we'll

1 get those jury charges in and place them on the jurors' seats,
2 and then we'll be ready to go. If there's nothing else -- who
3 is going to be arguing for the plaintiff?

4 MR. BUZBEE: That would be me.

5 THE COURT: All right. And who is arguing for the
6 defense?

7 MR. BROWN: Mr. Galbraith.

8 THE COURT: Okay. He'll be coming shortly.

9 All right. I think we're on the same page.
10 Argument, one hour each; and then you'll get a 10 minute
11 rebuttal, at most.

12 MR. BUZBEE: Excellent. Thank you.

13 *(Judge leaves bench briefly)*

14 THE COURT: Remain standing. The jury is on its way
15 in.

16 *(Jury present)*

17 THE COURT: All right. Please be seated.

18 Well, good afternoon, ladies.

19 THE JURORS: (In unison) Hello.

20 THE COURT: I sure hope you-all had a good lunch.

21 THE JURORS: (In unison) We did.

22 THE COURT: Great. We are now ready. We're down to
23 that portion of the case that involves a little bit more
24 attention -- directed attention from you.

25 I'll be reading what you have in your hands,

01:04 1 called the "Instructions to the Jury." You certainly can
2 follow along. You can take those back with you so that as you
3 get into your discussions and deliberations you don't need to
4 look over each others' shoulders to discuss various aspects of
01:04 5 the case. However, the answers to the interrogatories that are
6 attached to that are to be made on the original. And I have
7 the original here, which will go back with you. Now, when I
8 say "go back with you," it will go along with the exhibits that
9 have been admitted.

01:05 10 And what you will find is two exhibit lists that
11 have -- both having excluded a lot of documents that are no
12 longer a part of the offer by the plaintiffs or the defendants.
13 And, so, you'll have those two lists so that you might find
14 those exhibits in the exhibit boxes, in the boxes that we will
01:05 15 also have delivered back to you. So, you'll have your
16 instructions, you'll have the exhibits, and you'll have the
17 exhibit list.

18 And just as a friendly reminder, we will not be
19 able to bring to you, provide to you the testimony of any
01:05 20 witnesses. You're going to have to rely upon your collective
21 recollections as to what was said and how it was said or what
22 was done. So, that credibility issue becomes one that must be
23 a part of your discussions.

24 So, when you are back -- and I'm not suggesting
01:05 25 that you will. But if you come to some point where there is a

01:06 1 serious dispute as to what a particular person said, if it's
2 specifically identifiable in a way that we can find it in the
3 record, we'll go look for it. But we don't have printed copies
4 of the record to hand to you for you to read and go back
01:06 5 through the testimony, because that would not be an appropriate
6 way to present the evidence to you in this case.

7 Let's see. Is there anything else I need to say
8 before I get started?

9 Let's see. The closing arguments, the time
01:06 10 allocated for counsel for plaintiff and defendant is one hour
11 each with plaintiff having a 10 minute -- at most, 10 minute
12 rebuttal.

13 I think the better way to do this, so that we
14 don't look at two and a half hours of sitting -- or two hours
01:06 15 and so-many minutes of sitting, is we will take about a 10
16 minute break at the end of the plaintiffs' presentation,
17 stretch your legs, walk around, and then we'll go to the
18 defendant's and we'll take all of that plus the plaintiffs'
19 rebuttal, and then you'll be retired to the jury room for
01:07 20 deliberations.

21 All right. I think we're ready to get started,
22 and I will start, myself, by reading the charge to you. The
23 lawyers have copies of this. And if you see typographical
24 errors, blame it on me. If you see -- if I make a mistake in
01:07 25 reading, blame it on me.

01:07 1 And the reason I give it to you is because you'll
2 be able to do your own perfect reading yourself if I misstate
3 something. Sometimes I -- having done this for so many years,
4 I'll say things that I've seen so many times and perhaps
01:07 5 they're in this and perhaps they're not. But just watch me
6 carefully as I go through.

7 All right. Ladies, you have heard the evidence
8 in this case. I will now instruct you on the law that you must
9 apply. It is your duty to follow the law as I give it to you.
01:07 10 On the other hand, you the jury are the judges of the facts.
11 Do not consider any statements that I have made during the
12 course of the trial or made in these instructions as an
13 indication that I have any opinion about the facts of this
14 case.

01:08 15 After I instruct you on the law, the attorneys
16 will have an opportunity to make their closing arguments.
17 Statements and arguments of the attorneys are not evidence and
18 are not instructions on the law. They are intended only to
19 assist the jury in understanding the evidence and the parties'
01:08 20 contentions.

21 Answer each question from the facts as you find
22 them. Do not decide who you think should win and then answer
23 the questions accordingly. Your answers and your verdict must
24 be unanimous.

01:08 25 Do not let bias, prejudice, or sympathy play any

01:08 1 part in your deliberations. A corporation and all other
2 persons are equal before the law and must be treated as equals
3 in a court of justice.

4 You must answer all questions by a preponderance
01:08 5 of the evidence. By this is meant the greater weight and
6 degree of credible evidence before you. In other words, a
7 preponderance of the evidence just means the amount of evidence
8 that persuades you that a claim is more likely so than not so.

9 In determining whether any fact has been proved by a
01:09 10 preponderance of the evidence in the case, you may, unless
11 otherwise instructed, consider the testimony of all witnesses,
12 regardless of who may have called them, and all exhibits and
13 evidence, regardless of who may have produced them.

14 The testimony of a single witness may be
01:09 15 sufficient to prove any fact even if a greater number of
16 witnesses may have testified to the contrary if, after
17 considering all other evidence, you believe that single
18 witness.

19 In determining the weight to give to the
01:09 20 testimony of a witness, you should ask yourselves whether there
21 was evidence tending to prove that the witness falsely
22 testified concerning some important fact or whether there was
23 evidence that at some other time the witness said or did
24 something or failed to say or do something that was different
01:09 25 from the testimony the witness gave before you during the

01:09 1 trial.

2 A witness may be discredited or "impeached" by
3 contradictory evidence, by showing that he or she testified
4 falsely concerning a material matter or by evidence that at
01:10 5 some other time the witness has said or done something or has
6 failed to say or do something which is inconsistent with the
7 witness' present testimony. If you believe that any witness
8 has been so impeached, then it is your exclusive province to
9 give the testimony of that witness such credibility or weight,
01:10 10 if any, as you think -- or may think it deserves.

11 You should keep in mind, of course, that a single
12 mistake by a witness does not necessarily mean that the witness
13 was not telling the truth as he or she remembers it, because
14 people may forget some things or remember other things
01:10 15 inaccurately. So, if a witness has made a misstatement, you
16 need to consider whether that misstatement was an intentional
17 falsehood or simply an innocent lapse of memory; and the
18 significance of that may depend on whether it has to do with an
19 important fact or with only an unimportant detail.

01:10 20 Now, while you should consider only the evidence
21 in this case, you are permitted to draw such reasonable
22 inferences from the testimony and exhibits as you feel are
23 justified in the light of common experience. In other words,
24 you may make deductions and reach conclusions that reason and
01:11 25 common sense leads you to draw from the facts that have been

01:11 1 established by the testimony and evidence in the case.

2 There are two types of evidence that you may
3 consider in properly finding the truth as to the facts in the
4 case. One is direct evidence, such as the testimony of an
01:11 5 eyewitness. The other is indirect or circumstantial evidence,
6 the proof of a chain of circumstances that indicates the
7 existence or nonexistence of certain other facts. As a general
8 rule, the law makes no distinction between direct and
9 circumstantial evidence but simply requires that you find the
01:11 10 facts from the preponderance of all the evidence, both direct
11 and circumstantial.

12 Now, when you retire to the jury room to
13 deliberate on your verdict, you may take this charge with you
14 as well as exhibits which the Court has admitted into evidence.
01:12 15 Select your foreperson and conduct your deliberations. If you
16 recess during your deliberations, follow all of the
17 instructions that the Court has given to you about/on your
18 conduct during the trial.

19 After you have reached your unanimous verdict,
01:12 20 your foreperson is to fill in on the form your answers to the
21 questions. Do not reveal your answers until such time as you
22 are discharged, unless otherwise directed by me. You must
23 never disclose to anyone, not even me, your numerical division
24 on any question.

01:12 25 Now, just as a matter of point at this juncture,

01:12 1 there may be -- and I have not checked, but we'll check to see.
2 There may be question forms in the jury room for you. If
3 they're not there, we will certainly make sure there is a form
4 for -- or paperwork for you -- for the foreperson to raise a
01:12 5 question.

6 If there is a question that you need me to
7 answer, then I will be -- the case manager will be bringing
8 that to me, or the marshal or the court security officer will
9 bring that to me. So, we'll make sure we've got some paper in
01:13 10 there for that question, if any question arises.

11 If you want to communicate with me at any time,
12 please write a written message or question to the bailiffs, who
13 will bring it to me. I will then respond as promptly as
14 possible either in writing or by having you brought into the
01:13 15 courtroom so that I can address you orally. I will always
16 first disclose to the attorneys your question and my response
17 before I answer your question.

18 After you reach a verdict, you're not required to
19 talk with anyone about the case, unless the Court, I should
01:13 20 say, directs or orders otherwise.

21 Section II deals with the contentions of the
22 parties.

23 In this case, the plaintiff claims -- the
24 plaintiffs claim that, in the evening hours of April 19, 2007,
01:14 25 while working in the BP Pipestill 3B and Cat 1 Units, they were

01:14 1 exposed to toxic substances. They claim to have experienced
2 various symptoms that required medical evaluation and/or
3 treatment. In this regard, the plaintiff claims that BP was
4 negligent in failing to maintain a safe workplace due to poor
01:14 5 maintenance.

6 The plaintiffs assert that the equipment is old
7 and unreliable and that BP's maintenance program reacts to
8 breakdowns as opposed to proactively addressing them. Hence,
9 there have been numerous releases and spills of toxic
01:14 10 substances at the BP facility before and since April 19th,
11 2007.

12 The plaintiffs also assert that BP did not have
13 sufficient monitoring systems in place to detect a release of
14 toxic substances, to warn workers of a release, and to timely
01:14 15 evacuate them from the premises. Those are the plaintiffs'
16 contentions.

17 The defendant, BP, claims that it did not release
18 a toxic substance on the evening of April 19th, 2007. BP
19 disputes that the plaintiffs sustained disabling injuries as a
01:15 20 result of its conduct. Moreover, BP claims that there is no
21 evidence that the plaintiffs were exposed to any substance in
22 excess of the applicable permissible exposure limits
23 established by OSHA.

24 Finally, BP claims, (a), it was not in control of
01:15 25 any instrumentality that caused the odor event of April 19th,

01:15 1 2007; (b), there's no evidence that the alleged unidentified
2 cause of the odor was under control of BP; (c), the cause of
3 the odor event was due to the negligence of a third party over
4 whom BP had no control; and (d), the plaintiffs' injuries, if
01:15 5 any, were preexisting and not proximately caused by the odor
6 event of April 19th; and, (e), the odor event was the result of
7 an unavoidable accident. These are BP's contentions.

8 Because corporations are not natural persons,
9 they act through agents, employees, and servants. Therefore,
01:16 10 acts of negligence committed by BP's agents, employees, and
11 servants, that arose out of or done in conducting BP's business
12 and done in the course and scope of that relationship binds BP.
13 Hence, the negligence of BP, if any, may be due to acts of any
14 such agent, employee, or servant of BP.

01:16 15 "Definitions." The Rules of Evidence provide
16 that -- it should be "if" -- that if scientific, technical, or
17 other specialized knowledge might assist you in
18 understanding -- in the understanding of the evidence or in
19 determining a fact in issue, a witness qualified as an expert
01:16 20 by knowledge, skill, experience, training, or education may
21 testify and state his or her opinion concerning such matters.

22 You should consider each expert opinion received
23 in this case and give it such weight as you may think it
24 deserves. If you should decide that the opinion of an expert
01:16 25 witness is not based on sufficient education and experience or

01:17 1 if you should conclude that the reasons given in support of the
2 opinion are not sound or that the opinion is outweighed by
3 other evidence, then you may disregard that opinion entirely.

01:17 4 "Proximate cause" means that cause which, in a
5 natural and continuous sequence, produces an event and without
6 which cause such event would not have occurred. In order to be
7 a proximate cause, the act or omission complained of must be
8 such that a person using ordinary care would have foreseen that
9 the event or some similar event might reasonably result
01:17 10 therefrom. There may be more than one proximate cause of an
11 event.

12 "Negligence" is a failure to use ordinary care;
13 that is, failing to do that which a person of ordinary prudence
14 would have done under the same or similar circumstances or
01:17 15 doing that which a person of ordinary prudence would not have
16 done under the same or similar circumstances.

17 "Ordinary care" means that degree of care that
18 would be used by a person of ordinary prudence under the same
19 or similar circumstances.

01:18 20 Gross negligence. The plaintiff also claims that
21 the defendant was grossly negligent. To prevail on this claim,
22 the plaintiff must prove that BP was grossly negligent by clear
23 and convincing evidence.

24 Now, you notice earlier I used the term
01:18 25 "preponderance of the evidence" having to do with one standard

01:18 1 of proof. "Gross negligence" requires a different standard of
2 proof, and that's what I am referring to here.

3 "Clear and convincing evidence" is the measure or
4 degree of proof that produces a firm belief or conviction of
01:18 5 the truth of the allegations sought to be established.

6 "Gross negligence" must be viewed objectively
7 from the standpoint of BP, the act or omission must involve an
8 extreme degree of risk, considering the probability and
9 magnitude of the potential harm to others; and BP must have
01:19 10 actual, subjective awareness of the risk involved but,
11 nevertheless, proceed in conscious indifference to the rights,
12 safety, or welfare of the plaintiffs.

13 Compensatory damages. If you find that BP is
14 liable to the plaintiffs, then you must determine an amount
01:19 15 that is fair compensation for all of the plaintiffs' damages.
16 These damages are called "compensatory damages." The purpose
17 of compensatory damages is to make the plaintiffs whole; that
18 is, to compensate the plaintiffs for the damages the plaintiffs
19 have suffered.

01:19 20 Compensatory damages are not limited to expenses
21 that the plaintiff may have incurred because of the injury. If
22 the plaintiffs prevail, they're entitled to compensatory
23 damages for the physical injury, pain and suffering, mental
24 anguish that they have suffered because of BP's conduct. The
01:19 25 plaintiffs' claims -- the plaintiffs claim damages of past

01:19 1 physical pain, mental anguish, loss of earnings, and medical
2 expenses.

3 Of course, the fact that I give you instructions
4 concerning the issue of damages should not be interpreted in
01:20 5 any way as an indication that I believe that the plaintiffs
6 should or should not prevail in the case. You may award
7 compensatory damages only for injuries that the plaintiffs have
8 proved were proximately caused by BP's allegedly wrongful
9 conduct.

01:20 10 The damages that you award must be fair
11 compensation for all of the plaintiffs' damages, no more or
12 less. You should not award compensatory damages for
13 speculative -- speculative injuries but only those injuries
14 which the plaintiffs have actually suffered or that the
01:20 15 plaintiffs are reasonably likely to suffer in the future.

16 If you decide to award compensatory damages, you
17 should be guided by dispassionate common sense. Computing
18 damages may be difficult, but you must not let that difficulty
19 in such calculations lead you to engage in arbitrary guesswork.
01:20 20 On the other hand, the law does not require the plaintiff to
21 prove the amount of his or her losses with mathematical
22 precision but only with as much definiteness and accuracy as
23 the circumstances permit.

24 You may award damages for any injury or illness
01:21 25 that any plaintiff suffered before the date of his -- you may

01:21 1 not -- I'm sorry.

2 You may not award damages for any injury or
3 illness that any plaintiff suffered before the date of his or
4 her alleged injury or accident, should I say, on April 19,
01:21 5 2007. However, you may award damages for aggravation of an
6 existing physical defect or activation of any such latent
7 condition resulting from physical injury to any plaintiff.

8 If you find that -- if you find that there was
9 such an aggravation, you must determine, if you can, what
01:21 10 portion of a plaintiff's condition resulted from the
11 aggravation and make allowance in your verdict only for that
12 aggravation.

13 And the next and final section is
14 "Interrogatories."

01:21 15 You're instructed that you may infer negligence
16 by BP but not -- are not compelled to do so, if you find, (a),
17 that the character of the accident is such that it would not
18 ordinarily -- would ordinarily not happen in the absence of
19 negligence; and, (b), that the cause of the accident -- i.e.,
01:22 20 BP's failure to implement preventive techniques and corrective
21 measures in its maintenance program -- was under the control of
22 BP at the time of the -- at the time the negligence, if any,
23 causing the accident that allegedly occurred.

24 "Control" means that BP must control the timing
01:22 25 and implementation of any preventive techniques and corrective

01:22 1 measures at its facility.

2 You'll answer the following interrogatories. And
3 Interrogatory Number 1 inquires: Was there an escape, spill,
4 release, or leak of a toxic substance at the BP facility on the
01:22 5 occasion in question, due to the negligence of BP, its agents,
6 employees, or servants?

7 You'll answer that "yes" or "no," and a line is
8 provided for your answer.

9 Now, if you answer "yes" to Interrogatory
01:22 10 Number 1, then answer Interrogatory Number 2: Was such
11 negligence, if you have so found in Interrogatory Number 1, a
12 proximate cause of the injuries, if any, that you found -- that
13 you found that any plaintiff suffered?

14 You'll answer that "yes" or "no" as to each
01:23 15 plaintiff, if any, that you have found sustained an injury.
16 And lines are provided for your answers as to each plaintiff.
17 You'll answer those "yes" or "no," and lines are provided.

18 If you've answered "yes" to Interrogatory
19 Number 2 as to any plaintiff, and only in that event, answer
01:23 20 the following interrogatory: What compensatory damages -- and
21 we defined that earlier -- if any, do you find as to each
22 plaintiff for whom you answered "yes" in Interrogatory
23 Number 2?

24 You'll answer in dollars and cents, if any.
01:23 25 Lines are provided for your answers.

01:23 1 By way of example, Number 1, Gilberto Cantu, you
2 see lines for Mental Anguish/Pain and Suffering, past medical
3 expenses, lost income. That same or those same claims are
4 being made by all of the plaintiffs except Edwin Munoz,
01:24 5 Number 8. So, 1 through 7, the same claims are being made.
6 Edwin Munoz is asking for, additionally, future medical
7 expenses; and that's the distinction between Mr. Munoz and the
8 others.

9 Lines are provided for your answers as to each of
01:24 10 those if you are led to those by your answers.

11 If you have answered Interrogatory Number 3 as to
12 any plaintiff, and only in that event, then answer the
13 following interrogatory.

14 This deals with punitive damages.

01:24 15 You may also award punitive damages if the
16 plaintiff, or any plaintiff, for that matter, has proven that
17 BP acted with gross negligence, with malice, or with
18 willfulness, or with callous and reckless indifference for the
19 safety or rights of others.

01:24 20 One acts willfully or with reckless indifference
21 for the rights of others when he acts in disregard of a high
22 and excessive degree of danger about which he knows or would
23 have -- or which would be apparent to a reasonable person in
24 his position.

01:25 25 If you determine that BP's conduct was so

01:25 1 shocking and offensive as to justify an award of punitive
2 damages, you must exercise your discretion to award those
3 damages. In making any award of punitive damages, you should
4 be -- you should consider -- I'm sorry, I'm getting tired --
01:25 5 that the purpose of punitive damages is to punish a defendant
6 for shocking conduct and to deter that defendant and others
7 from engaging in similar conduct in the future.

8 The law does not require you to award punitive
9 damages. However, if you decide to award punitive damages, you
01:25 10 must use sound reason in setting the amount of the damages.
11 The amount of the award of punitive damages must not reflect
12 bias, prejudice, or sympathy toward any party. However, the
13 amount can be as large as you believe necessary to fulfill the
14 purposes of punitive damages.

01:26 15 Interrogatory Number 4 inquires: What damages,
16 if any, do you award as punitive damages against BP?

17 And a line is provided as relates to each of the
18 plaintiffs, assuming that you make that choice.

19 The jurors certificate. We the jury have
01:26 20 answered the above and foregoing questions as herein indicated
21 and herewith return our unanimous verdict into court, to be
22 signed by the jury foreperson.

23 I have the original. As I indicated earlier,
24 we'll make sure this original gets back. The answers are to be
01:26 25 recorded on the original.

01:26 1 All right. Ladies and gentlemen, we're now ready
2 to start with the closing arguments; and we'll start with the
3 plaintiff.

4 Counsel, you may proceed.

01:26 5 MR. BUZBEE: Yes, your Honor. May it please the
6 Court.

7 THE COURT: Yes.

8 MR. BUZBEE: Ladies of the jury, I know it's been a
9 long three weeks. I promised you at the beginning that I would
01:26 10 move it as quickly as I could, and I tried to do that.

11 But I've got to go back to this. This case is
12 about responsibility, and that's not just a word. We use it a
13 lot. I use it with my four kids a lot, "responsibility." And
14 "Kids of Character," you've probably heard of all that, talking
01:27 15 about responsibility all the time. But I think we use that
16 word so much that we sometimes forget what it really means.

17 It means being morally, legally, or mentally
18 accountable for your actions. And what we have here in this
19 case is a defendant, a company, that simply will not take
01:27 20 responsibility for its own actions.

21 This -- and, you know, I put up these damages.
22 And every time I put up these small amount of medical damages I
23 cringe a little bit because my thought was maybe you were
24 thinking, "Well, wait a minute, Tony. I just got ripped out of
01:27 25 my life for three weeks to come down here and sit through a lot

01:27 1 of stuff that's boring, a lot of things that were aggravating,"
2 I'm sure, to you. You were kept out of a lot of the
3 discussions that happened over there.

4 And every time I wrote down 1200 bucks or
01:28 5 900 bucks, I was thinking what must you be thinking. Maybe
6 you're thinking, "This is a complete waste of my time." But I
7 hope, now that we've done this for three weeks, that you see
8 that this, indeed, is the most important case that will be
9 tried this year in this state. The most important case.

01:28 10 Before I talk about the facts, I need to talk
11 about this -- this Latin phrase, "res ipsa loquitur." Now, one
12 of you is going to be the foreperson of this jury; and I hope
13 that whoever that is remembers, on Page 7 of the -- and that's
14 where it starts "Interrogatories" -- the judge instructs you on
01:28 15 res ipsa loquitur.

16 What it means is, we learned in law school, "the
17 thing speaks for itself." In other words, if BP controlled the
18 timing of their maintenance program and if this event was the
19 type that normally would not happen but for the lack of
01:29 20 maintenance, then the plaintiffs win the case. And the law
21 recognizes that it's inherently unfair for someone who is
22 outside looking in, who has no access to the plant, to be able
23 to tell you where that leak came from. The law doesn't require
24 us to do that.

01:29 25 We tried to do that, and they've taken potshots

01:29 1 at us all week. They didn't like the way we did our mask; they
2 didn't like this; they didn't like that. But the fact is we
3 tried to show you where carbon disulfide would come from. And
4 I think, more likely than not, we clearly did that.

01:29 5 But even if you say, "You know what, Tony? I
6 don't like the fact that the mask sat in your offices for three
7 weeks" or "I don't like the fact that one of your lawyers, Kyle
8 Smith, somehow the box got busted and, so, therefore, you
9 haven't proven to me with mathematical certainty," which you
01:29 10 saw we're not required to do, "that that's carbon disulfide," I
11 would submit to you this: res ipsa loquitur. It means if this
12 is the type of event that normally does not happen with
13 negligence -- without negligence -- in other words, we know
14 releases don't happen but for negligence, bottom line --

01:30 15 because the number one rule is what? Keep it in the pipes.
16 How many times did you hear that -- and we know that BP has
17 complete control over their facility and it's, in fact, their
18 duty and responsibility morally, ethically, and legally to do
19 maintenance, then we win, whether you think it's the SRU, which
01:30 20 I believe it clearly was, or whether you think they were using
21 some sort of carbon disulfide industrial solvent to -- and
22 didn't properly clear it all out before these contractors went
23 in there. That's the -- that's why Page 7 is what I would like
24 you to focus on, res ipsa. You won't see the Latin phrase, but
01:30 25 that's what it is, something that we talk about in law school.

01:30 1 Now, the burden of proof. This is the oldest
2 court, the oldest federal court in the State of Texas. I bet
3 you didn't know that. This is the oldest federal court. When
4 Texas became a part of the United States, it wasn't -- wasn't
01:30 5 located here but it was located in Galveston. And this is the
6 oldest court that has ever existed in the State of Texas.

7 And one cool thing about this court -- and I have
8 tried 20 or 30 cases in this court -- is, if you look up at the
9 lights -- see the lights? Those are patterned after the scales
01:31 10 of justice. It's a real cool feature. And one of the judges
11 that was here, you know, he did spend a lot of time trying to
12 give a nod to history and a nod to the fact that, you know,
13 these courtrooms mean something.

14 To me it's -- for my profession, it's almost a
01:31 15 church, because this is the great equalizer. This is a place
16 where if you get too big to be regulated by the State or by the
17 federal government you can still be regulated by eight people
18 yanked out of their lives to hear facts.

19 But I want you to remember this: The burden of
01:31 20 proof is, is it more likely than not. Basically, as the judge
21 said, if you believe that we have shown you that it's more
22 likely than not, that we have tipped the scale in favor of
23 these plaintiffs, we win the case. It's mandated if you
24 believe that.

01:32 25 So, the question you're going to have to ask was

01:32 1 BP negligent, and the answer, I submit to you, is going to be,
2 yes.

3 And are the plaintiffs entitled to damages; and I
4 submit to you again, it's more likely than not, yes, they're
01:32 5 entitled to damages.

6 Now, BP, they're a convicted felon. We know
7 this. We spent a lot of time about their background. Why do
8 we talk about background? As anybody that's been in, for
9 instance, the teaching profession knows, there are people that
01:32 10 can turn the corner. We know that. People can change. But if
11 you want to know where someone is going, you look at where
12 they've been.

13 They've got -- they're a convicted felon for lack
14 of maintenance and inspections. Forty-six illegal pollutant
01:32 15 emissions. OSHA has fined them and cited them over 600 times,
16 400 times in September, for the exact same thing we're here to
17 talk about, failure to keep it in the pipes, failure to
18 inspect, failure to maintain. We heard that they were -- they
19 were over a thousand inspections behind, seven years behind.
01:33 20 By 2005 they were seven years behind in their maintenance.

21 Now, you're saying, "Well, okay. So what?"
22 Well, I submit to you that -- that you don't make that up in
23 two years when you're seven years behind. And that is a
24 conscious disregard for the safety of not only BP's own
01:33 25 employees but these contractors that come in here and do this

01:33 1 work at their plant.

2 They have the worst process safety management
3 record in the history of the United States, of keeping it in
4 the pipes; and they're the biggest polluter in the United
01:33 5 States. There's been over 500 releases, emissions, spills, and
6 leaks.

7 Remember -- remember Fire Chief McLemore? A fire
8 a week? And they tried to sugar coat that a little bit.
9 Remember? And he was doing his best, but you could tell his
01:33 10 heart really wasn't in it. He was done. He got his
11 retirement. But the truth is -- I showed you his deposition
12 where he admitted a couple years ago that they had one fire a
13 week.

14 Think about that. One fire a week, does that
01:34 15 sound like someplace safe to work? That sounds like a place
16 that is a disaster waiting to happen.

17 They average 200 leaks a year. And 70 percent of
18 the time that someone is made sick by an odor, they don't find
19 the source. I mean, if you got a plant where you're making
01:34 20 people sick out there and you can't find the source, what does
21 that tell you? That tells you that you are doing something
22 wrong.

23 And let me tell you something. I don't attack
24 chemical companies. I mean, they obviously have their place.
01:34 25 I drive cars. I use gas. These people, this company is an

01:34 1 anomaly. They're not like everyone else. They're the worst.

2 They can do this safely. It can be done the
3 right way, but they don't do it the right way. The lack of
4 maintenance and inspections leads to leaks, spills, and
01:34 5 releases. I mean, it just goes on and on.

6 Now, we're talking about chemicals. You know, I
7 was concerned in the case that -- we were talking about these
8 odors, and there's something to say -- we can talk about a
9 smell or it stinks, and we know what that is. But we're
01:35 10 talking about smells that make people sick or make people pass
11 out or make people throw up blood or make people have to use a
12 breathing machine for a couple of months. That's what I am
13 talking about.

14 It's a lot worse than simply a foul smell. We're
01:35 15 talking about corrosive, reactive, explosive, flammable; and
16 we're talking about pollutants. I mean, this is -- we live
17 here. This is where we live. This is our good neighbor that's
18 polluting our air, our ground, and our water.

19 I'm going to run through these quickly because
01:35 20 you've seen it about four times. Ninety-five leaks in a
21 six-month period; one hundred five leaks in that six-month
22 period. One hundred twenty-six leaks.

23 And do you also notice that Pipestill 3B, which
24 is supposed to be de-inventoried and have nothing in it,
01:35 25 they're still having leaks there? Anyone with common sense

01:36 1 knows if it's de-inventoried, they cleaned it out, they flushed
2 it out, they vacuumed it, all this stuff they claim they did
3 before the contractors went in. Then why is it still having
4 leaks?

01:36 5 January 1 up until -- or the six-month period
6 that this incident occurred, 162 leaks. Now, did you notice
7 that they came in and they tried to minimize that and tried to
8 say, "Well, every leak doesn't mean somebody got sick or that
9 there was pollution or that it was illegal"? Every leak means
01:36 10 they violated Rule Number 1.

11 And granted, I mean, if we wanted to stay here
12 for six months, which I gathered you guys didn't want to do, we
13 could have went through every leak. We could have done that
14 and we could have put BP to task and we could have said, "Okay,
01:36 15 BP. See, that's a major leak, that's a major leak."

16 But did they bring you a document that says that
17 none of these were major leaks? Of course, not. All they
18 brought you was a bunch of talk. They didn't bring you
19 anything to look at or to hold or to read.

01:37 20 BP also -- not only do they have all these leaks
21 and spills and releases, they also don't investigate them. You
22 remember what the worker said? Remember that little survey
23 that I went over with Chief McLemore? Remember one of the
24 things the worker said was "no one looks at Traction."

01:37 25 Remember Traction was supposed to be this real

01:37 1 important thing that everybody looked at and followed because
2 it was logged? No one looks at it.

3 "No inspections," "there's not enough
4 inspections," "not enough money spent on maintenance," "we're
01:37 5 understaffed," these are their own workers saying it. I mean,
6 one way you can look at this is to blame the BP workers. And I
7 think that's an unfair way to look at it, personally. I think
8 that's a management problem.

9 And it's probably not even the man from League
01:37 10 City, the plant manager. It's probably a management problem
11 over in London because they simply don't want to spend the
12 money to make the plant safe.

13 Remember this whole idea of "clamp on top of
14 clamp on top of clamp"? It's basically putting a Band-Aid over
01:37 15 a Band-Aid over a Band-Aid. They don't do proper investigation
16 of incidents. And we know, all the while this is going on,
17 they're making \$130 million of profit a month. That's what we
18 know.

19 Here is just a list of various instances simply
01:38 20 not investigated. I mean, the releases listed? And they don't
21 spend a minute investigating. If that is not -- does not shock
22 your conscience, I don't think I can shock your conscience.
23 It's going to take a much better lawyer than me to shock your
24 conscience. If you look at that and you see the
01:38 25 350,000 gallons of hydrocarbon that was spilled out there and

01:38 1 there was not -- beyond that one piece of paper, there's no
2 investigation, I can't shock your conscience.

3 And, then, odor events, what BP calls "odor
4 events." This is the first -- I never heard that phrase
01:38 5 before, "odor event," until I started looking at this case.
6 This is what BP calls when somebody gets sick, and it goes into
7 Traction, "That's an odor event." We all know that means that
8 somebody got exposed to a chemical. Seventy percent of the
9 time, they don't investigate it. Seventy percent of the time
01:38 10 they don't find out what it was.

11 Why would they do that? Because if they find out
12 what it is they have to report it. That's a fact. And, so,
13 what we have is -- I made this nifty little graph -- is
14 70 percent of the time, they don't source it, they don't report
01:39 15 it.

16 Now, that is actually a picture of the
17 pipestills. Never did a good job of showing you that, but
18 that's what it is. You can see the towers, but you can also
19 see that that area is very -- you know, we talked about whether
01:39 20 it's a confined area or not a confined area. Anybody with
21 common sense can see that's a confined area. It's not a
22 football field. There's a bunch of equipment out there.

23 The SRU Unit, we know that the SRU Unit is a --

24 A JUROR: (Indicating).

01:39 25 MR. BUZBEE: I'm sorry. I keep trying to --

01:39 1 A JUROR: I can't stand this.

2 MR. BUZBEE: I know. I'm sorry about that. This
3 thing right here, I'm looking at --

4 THE COURT: You can let those arms down. I think they
01:39 5 will let down. They should release.

6 MR. BUZBEE: All right. Maybe that's better.

7 THE COURT: Same with those arms there.

8 MR. BUZBEE: Sorry.

9 Okay. Let's talk about the SRU Unit. You heard
01:40 10 the SRU Unit has carbon disulfide. But the whole argument is
11 this, "Well, yes, Tony, it has carbon disulfide. But if it
12 leaked carbon disulfide, it would have leaked hydrogen sulfide;
13 so, it would have killed everybody." I mean, that's their
14 argument, right?

01:40 15 But that's when the SRU Unit is functioning
16 properly. Now, how many times do we know that it wasn't
17 functioning properly? How many times do we know that there --
18 remember I got that anonymous call, that they squalled about
19 because I was asking some of the witnesses about it? The
01:40 20 anonymous caller was right. It took me a couple of questions
21 to get the guy from Cherry Point to admit that there was, in
22 fact, a problem with the seal. Now, they didn't replace the
23 seal; but there was a problem, and it was leaking.

24 And you heard the evidence that there was an
01:40 25 announcement that the SRU has been fixed and it was, like, a

01:40 1 wave of relief because the SRU had been acting up and causing
2 problems. But it wasn't the only time it had been acting up.
3 There had been 50 total events at the SRU Unit. And one -- in
4 a seven year period, they -- they leaked 407,000 pounds of
01:41 5 sulfur dioxide and 7,000 pounds of hydrogen sulfide from that
6 one SRU Unit that is, literally, less than 30 miles from this
7 courthouse.

8 The SRU Unit, we talked about the ratios. We
9 know that it routinely malfunctions. And we had to reach an
01:41 10 agreement on what "malfunction" means, it doesn't operate
11 properly. We know that the seal was, in fact, repaired. And
12 we also know one thing about carbon disulfide: It evaporates
13 very easily and the vapor can collect on top of the pool.

14 And, so, carbon disulfide will evaporate and
01:41 15 become a vapor; and then it can get leaked. And it can get
16 leaked from high up. And it's heavier than air, and it can
17 rain down on people in vapor form; and that's exactly what
18 happened here. And anybody that has common sense knows that's
19 probably what happened here.

01:42 20 Let's talk about this -- look at that quote
21 there. "There is no shame in not knowing. The shame lies in
22 not finding out." We know that in the days leading up to this
23 release, March 21st -- let's skip that because that's not close
24 enough in time. Let's start with January 22nd. Workers were
01:42 25 overcome by a chemical, causing nausea and sore throat.

01:42 1 Then April 12th, five days before the incident,
2 workers were -- worker was overcome by a chemical, causing
3 nausea. And then we see on April 19th, literally 20 hours
4 before this event, that five workers -- now, you-all remember
01:42 5 Paula Jowell? Remember her? She was early on in the case, and
6 a lot has happened.

7 But I was thinking, in my view, she was probably
8 one of the most powerful witnesses because you -- she didn't
9 have any experience with plants. You can tell. She was out
01:42 10 there picking up trash. But you could see she was terrified
11 when she had been gassed the night before and then, when it
12 happened again and she -- remember, her statement is in
13 evidence, you-all can look at it. She came out of the
14 Pipestill 3B Unit; and she said people were just strung
01:43 15 everywhere, people were sick everywhere, people were throwing
16 up, people were passing out, people were dizzy. This was an
17 odor event according to BP.

18 And you heard Chief McLemore. Remember what he
19 said? I said, "Chief, if there was an incident 20 hours before
01:43 20 that caused five people to get sick, would you have sent them
21 right back in there?" And remember I said, "That would be
22 ridiculous, wouldn't it?"

23 And he said, "Yes." That's the fire chief.

24 Now, granted, he didn't know anything about it;
01:43 25 but we know that that unit, Pipestill 3B, because of caustic

01:43 1 odors making people sick, was evacuated more than 17 times
2 during this turnaround. That is a workplace that's unsafe.

3 Now, it's one thing to tell these workers, "Hey,
4 look here, workers, you're going to get gassed. Here's you a
01:43 5 mask you can wear, and you can wear it all the time." That's
6 one thing. It's quite another to say, "No. We have a safe
7 workplace," and then repeatedly make people sick and then stick
8 your head in the sand like an ostrich and pretend like you
9 don't know what it was and you're not going to find out.

01:44 10 We know there was overwhelming evidence of a
11 release that caused five workers to get sick 20 hours prior and
12 BP did nothing. They were out of that unit for about two hours
13 and then, without finding the source, without setting up any
14 kind of monitoring, without taking any precautions whatsoever,
01:44 15 they sent them right back in there. None of the prior
16 incidents that I just showed you were investigated. The blind
17 cannot see. The arrogant will not see.

18 Now, we know for a fact that 110 people went to
19 the hospital. And despite what their last expert said, we know
01:44 20 that they weren't light hearted. We know they were throwing
21 up. We had -- one guy said he threw up blood. We talked about
22 two people, at least, that had to have breathing treatments.
23 We had two people, at least, that passed out. We had eyes
24 burning, throwing up -- I mean, everything you can imagine.
01:45 25 And if you put it in the context of getting gassed with

01:45 1 something, it will scare the devil out of you. It will scare
2 the devil out of you.

3 You know, in the Marines -- we talked about it a
4 little bit in the opening statements. They used to gas us
01:45 5 purposely so we -- you probably -- now you know why I'm screwed
6 up like I am. They used to gas us purposely. They'd take us
7 into a gas chamber, with a mask on; and the idea was to teach
8 you how important the mask was.

9 So, you would be in there; and they would gases
01:45 10 you. All right? And then you would have to take your mask off
11 and then do exercises. And then you would run out; and you
12 would be sick, and you would be this and that. But we knew
13 what we had been gassed with, and we knew that it wouldn't hurt
14 you. And the idea was to teach -- but it was still scary. It
01:45 15 was very scary.

16 So, imagine when you're at work or these workers
17 are at work and they're just all of the sudden vaped and
18 gassed and they see people passing out and throwing up and
19 there's ambulances coming and then no one will tell them what
01:46 20 it is. We know that some people passed out, some people threw
21 up blood, a hundred and eighty-nine people reported the odor.
22 BP has a long history of this conduct.

23 The smell -- their own expert said that the smell
24 and the symptoms were consistent with carbon disulfide, and we
01:46 25 know that carbon disulfide was found on the mask. And even

01:46 1 their \$400,000 expert, I made him admit you cannot rule out
2 carbon disulfide.

3 Remember they -- at the beginning -- I don't know
4 if you remember Mr. Galbraith's opening statement. He promised
01:46 5 a lot. Boy, he promised a lot. He didn't prove anything. He
6 didn't prove anything. Their own expert says you can't rule
7 out carbon disulfide.

8 This is their rigorous investigations. I really
9 wish you would, if you feel compelled, look at Plaintiffs'
01:46 10 Exhibit 2, the investigative report. Read that. When you read
11 it, you'll, just like I do, pick out every inconsistency and
12 every falsehood that we know the evidence does not support.
13 There was no mention of passing out, no mention of dead birds,
14 no mention of -- you're going to see all these statements where
01:47 15 people saw other people foaming at the mouth -- remember the
16 guy flopping like a fish? Remember that? When Mr. Galbraith
17 said, "Well, you said nobody passed out" -- I'm sorry. I said
18 "flopping like a fish." I -- semantics. Sorry about that --
19 vomiting.

01:47 20 And if you look at it, you can see lawyers --
21 lawyers all over that document. It was written by lawyers. It
22 was what you would call a prophylactic measure. It's somebody
23 protecting themselves. It's somebody circling the wagons.
24 Because this event was reported in all the newspapers, that
01:47 25 they had -- you look in the investigative report, by 23:00,

01:47 1 11:00 o'clock or so, the press was at the hospitals; and then
2 they came to the front gate.

3 They were circling the wagons already. It was a
4 big deal. And that's why this investigative report was written
01:47 5 by lawyers. And you can tell. If you read it, you'll see it
6 was written by lawyers. It was written very carefully. And
7 they left out a lot of key facts. Specifically the SRU seal,
8 they left that out, conveniently.

9 Where is the pressure data from the SRU Unit?

01:48 10 It's not in there. Now, the Cherry Point guy said he'd seen
11 it. But have we seen it? No, not ever produced it.

12 The pressure data, they produced pressure data
13 from Cat 3, which shows pressure drop. Remember we looked at
14 that? But they didn't produce the data from the SRU Unit for
01:48 15 some reason. There's no mention of all the previous incidents.
16 There's no mention of the subsequent incidents that happened
17 later.

18 They say in there that CTEH was on the scene
19 within hours. We know that's not true at all. It was 25 hours
01:48 20 later. Now, you may say: Tony, you're hedging words. You're
21 not" -- no, no. When you read the way it's written, it makes
22 it seem like that these guys were on call and they were on the
23 site, when they actually came a day later, when all the gas was
24 gone and most of the people had already been released from the
01:48 25 hospital.

01:48 1 And they say that BP was going up as the workers
2 were coming down. Well, that was physically impossible. Now,
3 do I have a problem with Darwin Perren? No. That guy was in
4 between a rock and a hard -- remember the guy on Friday last
01:49 5 week? When he walked out of here, he looked -- if looks could
6 kill, he would have killed me. No doubt about it.

7 But the truth is, by the time he got out there --
8 and whether you believe he knew how to use the monitor or
9 not -- I read the manual, but one thing I understand is people
01:49 10 out in the field know more than some silly lawyer reading a
11 manual. I realize that. I'm not so dumb as to not know that.
12 But I do know what the manual says, and I do know he didn't
13 operate that device in accordance with the manual. Now, does
14 that mean that his readings are wrong? I don't know, but it's
01:49 15 of no moment.

16 And the reason it's not important is because by
17 the time he started taking readings the gas was long gone, long
18 gone. Because you can imagine if you -- if someone were
19 150 feet up on that tower, they getting off that tower and
01:49 20 they're getting off it fast. And don't try to pretend that
21 there's going to be some guy up there who's getting gassed
22 who's going to say, "Oh, yeah, we'll hold up, Darwin. Let's
23 all move aside and let Darwin come up." There ain't no way.

24 We just -- everybody would be trying to get off
01:50 25 that tower. And there was one way up, and there was one way

01:50 1 down. And everybody got down, and then he went up; and it took
2 a long time. So, of course his testing didn't find anything.
3 We can do the same tests right here, but we know the gas is not
4 here. The gas is long gone.

01:50 5 I'd like you to really look at Exhibit 2, their
6 investigative report, because I submit to you it's written in a
7 defensive mode, period. It's not written in a mode trying to
8 find anything out. It's written in a mode to protect
9 themselves.

01:50 10 The key witnesses, we've talked about Paula
11 Jowell. We talked about Chief McLemore. Dr. Dydek, now, "Tony
12 Buzbee's mask test is baloney. It's not scientific. He didn't
13 keep a chain of custody. He didn't do this" -- okay. That's
14 fine, armchair quarterback. Where is your test? You collected
01:50 15 over a hundred masks. You collected over a hundred masks,
16 lawyers out there on the site that night. Where are they? Why
17 didn't you test them?

18 I was able to get my hands on one mask, and I did
19 my best to test it. And maybe I'm not a scientist; but one
01:51 20 thing I know, told you from the very beginning: I, from the
21 mask, cannot tell you how much carbon disulfide was on there.
22 The purpose of the test of the mask is to tell you that it was
23 there. That it was there. And we have to do it -- we have to
24 go about it the other way. There's more than one way to skin a
01:51 25 cat.

01:51 1 We know it was present. So, now we have to
2 figure out how much. And the way we figure out how much is
3 based on symptoms. And then it comes down to you deciding
4 whether you thought these ten people were liars. Because for
01:51 5 you not to believe that these folks were gassed, you'll have to
6 believe that all ten are liars and the other eight that came
7 in, some of which don't even have cases, were liars, too.

8 That's what -- now, BP hasn't come out and said,
9 "You're a liar, you're a liar." But that's -- their whole case
01:52 10 comes down to that, that these workers, 18 or so of them,
11 they're liars, they're not telling the truth. When they
12 passed -- they didn't really pass out, even though there was
13 several witnesses who saw it. They didn't really throw up
14 blood, because they didn't collect a sample. How many times
01:52 15 when you've thrown up have you collected a sample right then so
16 you could have proof of it? That's ridiculous on its face.

17 Now, who did we not -- one person we heard from
18 is Jeremy Gracia. Do you-all remember him? Remember the young
19 man who he came in and he talked about an event that occurred
01:52 20 on January 14th of 2008, well after this one, a process safety
21 management event that had a great impact on his life? Let me
22 tell you something. These releases and spills and leaks have
23 major consequences. Major consequences. Lay aside the ISOM
24 event -- which you've heard a little bit about, not much, in --
01:52 25 2005. We're talking about events that are still happening,

01:52 1 January 14th of '08, that have major impacts on people's lives.

2 Who did we not hear from? We didn't hear from
3 one operator of the adjacent units. They didn't bring the SRU
4 operator. They didn't bring the Cat operator. They didn't
01:53 5 bring any operator, any BP operator, other than Darwin Perren.
6 That's all they brought.

7 They brought some guy from Cherry Point to tell
8 us about an SRU Unit in BP Texas City. What does that tell
9 you? They didn't bring anybody in maintenance. Did they come
01:53 10 in here and say, "No, we're not seven years behind on
11 maintenance"?

12 "No. You're wrong, Tony. We have been spending
13 proper money on maintenance and inspections." Of course,
14 they're going to say that. Because we know it's not true, that
01:53 15 they're way behind. And that's why this plant is so old and
16 dilapidated. It is in bad shape, and that's why people
17 continue to get sick out there.

18 They didn't bring in any -- not even a person
19 from the investigation team, not one. They brought in this
01:53 20 guy, Mr. Trapp, who wasn't a part of the investigation team.
21 That's what you call "window dressing." They brought in
22 professional witnesses who are called in when companies have
23 big problems, and they came in as window dressing and tried to
24 convince you that the sky is not blue.

01:54 25 Let me tell you, there's experts out -- I've been

01:54 1 around this business long enough to know that there are
2 particular experts, you pay them enough money and they'll
3 smooth things out for you. And that's what was attempted here.

4 BP's strategy -- this is their trial strategy,
01:54 5 just like their corporate strategy: If I don't see it, didn't
6 happen. If I didn't see it -- I mean, it's like saying I walk
7 along the beach over here and I see footprints and then I take
8 the position, "Well, those footprints are there; but there's
9 really no one walking there." That's just asinine on its face.

01:54 10 They guys did not find the source because they
11 didn't want to find the source. And I guess we could look at
12 it two ways. We could say, "They tried real hard, Tony.
13 They're just incompetent." That's one way. Or the second way
14 is they really didn't want to find it. Either way is
01:55 15 unacceptable. That's their corporate philosophy.

16 Even Secretary James Baker -- even Secretary
17 James Baker, the head of the investigative committee, said that
18 this company has a corporate blind spot to process safety
19 management. Now, this is after a long and troubled history, a
01:55 20 long and troubled history. They still have this problem.
21 After repeated OSHA violations, after repeated TCEQ violations,
22 after repeated -- I mean, you can -- you can imagine what
23 they've gone through, but nothing has changed. Not one thing.

24 I asked this -- this plant manager. He said,
01:55 25 "Yeah, Tony, we turned the corner in 2007." Two months ago

01:55 1 they got cited again 439 times because they simply had not done
2 any of the audits of their pressure safety relief valves, any
3 of their inspections.

4 And there's -- there are companies that are too
01:55 5 big to be regulated. Those companies exist. This is one of
6 them. They didn't even mention the pressure drop of the
7 Cat Unit. And, obviously, we talked about it. They didn't
8 mention the SRU pressure data, because they never produced it.

9 Their conclusion was there were no operational
01:56 10 upsets, in the report. No mention of the other incidents, the
11 pressure drops, no pressure data from the SRU Unit.

12 And, incidentally, you remember the guy, two
13 hours later --

14 What was his name, Sean?

01:56 15 MR. O'ROURKE: Gomez.

16 MR. BUZBEE: Mr. Gomez, two hours later he comes out
17 and they say, "What the devil are you doing here?" Remember he
18 was driving down and they got gassed and they all jumped out
19 and was ripping off their shirts and so forth? He never heard
01:56 20 an alarm. He was never told anything was going on.

21 We know for a fact that the alarm was not --
22 Darwin Perren wouldn't take any responsibility for it. It was
23 probably because it wasn't his -- it wasn't his duty to set off
24 the alarm. A lot of people could have avoided this just with a
01:56 25 proper alarm. They don't mention the alarm at all in their

01:56 1 investigation report.

2 What they did was they minimized the incident.
3 They sugar coated it; they downplayed it; they made pretend
4 like it wasn't a big deal. We know for a fact that within two
01:57 5 hours of this happening that Jerry Duke called TCEQ and said,
6 "There are some people with medical issues" -- this is what he
7 said -- "but there was no release here."

8 Now, remember they said they did a -- what was
9 that word -- a robust -- you don't hear that very often, do
01:57 10 you -- a robust investigation, five weeks even. They had
11 already made their conclusion within two hours. Certainly,
12 that's what they told the authorities.

13 Let me tell you something. Having been -- having
14 worked for the federal government in several capacities myself,
01:57 15 I can assure you that the federal government and OSHA and TCEQ,
16 the state are busier than one-armed paper hangers. Okay? We
17 know that. They do the best they can. But when they're lied
18 to, a lot of times they don't have the ability to ferret that
19 out. That's a fact. All right?

01:58 20 And that's why we have courts, because the
21 ultimate decision maker on BP's conduct is not OSHA and it's
22 not TCEQ, because they don't have any proceeding where you can
23 put somebody on the stand and cross-examine them and ferret out
24 the real truth. It's in a court of law and a jury.

01:58 25 BP's trial strategy is to ignore its own wind

01:58 1 data. Do you remember the wind data? I didn't do a good job
2 on the cross-examination, but this was the wind data. Remember
3 their expert said, 20 minutes leading up to the event, that's
4 the key wind data. This was BP's wind data from the closest
01:58 5 source to where this occurred. Look where the wind was coming
6 from. It doesn't say -- there's one point here. It's
7 east-southeast.

8 Their entire defense rests upon the fact of the
9 prevailing wind from the southeast. Show me a document that
01:59 10 says that. Show me your wind data that says that. It doesn't
11 exist. That's just people saying stuff. There's the facts.

12 You've got Wheeler saying it's from the north,
13 and then their investigation report -- now, remember, there's
14 two winds you got to focus in on here. I don't think any of
01:59 15 you -- and I may be wrong -- bought that at all, that it came
16 from off site. It jumped Valero -- it came from the docks, it
17 jumped Valero, no one got sick, no one got sick at the docks,
18 and then it landed on BP. Now, does anybody really buy that?
19 Do I need to spend time on that? Because that's ridiculous.
01:59 20 That violates common sense.

21 One thing you see in the charge is you don't
22 check your common sense at the door. There is no evidence of
23 anybody in Valero, any surrounding facility, from the train
24 docks, anyone, getting sick or any release whatsoever. To
01:59 25 believe that and to let them walk, you would have to suspend

02:00 1 belief. That some release went straight up in the air when the
2 wind was going this direction, completely opposite, somehow
3 found its way over BP and then literally parachuted in right on
4 top of Pipestill 3B, that's just ridiculous; but that's their
02:00 5 defense.

6 The winds are relevant because the release came
7 from inside the plant. And you may say, "Well, Tony, why
8 didn't they pick it up, because we know the wind, after the
9 release, shifted?" There's no doubt the wind, after people got
02:00 10 sick, shifted southeast. You can look at Plaintiffs' Exhibit
11 23. But at the time leading up to the people getting sick, it
12 was coming from the north.

13 So, let's say it came in -- the release happened
14 inside the plant and then the wind shifted from southeast and
02:00 15 blew it out of the plant. Then you're wondering, "Well, why
16 didn't it get picked up on the Texas City monitoring station?"
17 Well, because they don't pick up carbon disulfide. It makes
18 complete sense. Those monitoring stations, everyone admits, do
19 not detect carbon disulfide.

02:01 20 So, BP's trial strategy, besides just pretend
21 something didn't happen, stick their head in the sand, is just
22 to attack the testing, even though they didn't do any
23 themselves, minimize the incident and spend hundreds of
24 thousands of dollars to prove something that would violate all
02:01 25 principles of common sense.

02:01 1 So, here we are. No one died. One man has a
2 back injury that needs treatment. "But you're not asking for
3 thousands and thousands of dollars; so, why are you putting us
4 through this?" You're probably wondering, "Why are you putting
02:01 5 me through this?" Because just because no one died this time
6 we know for a fact doesn't mean somebody is not going to die
7 next time. And until this stops, until it stops, it's going to
8 continue. Because we know it continued after this. It
9 continued.

02:02 10 And I won't go through all of them, but just on
11 and release after release and people getting sick. Nothing
12 changed. And all of this happens during this \$2 million fancy
13 monitoring they were doing. Because they were being reactive
14 and not proactive.

02:02 15 You can go out there and monitor till the cows
16 come how. But until you fix your pipes, maintain them, inspect
17 them, what's the purpose? You're just putting up window
18 dressing so when you come into court you can try to convince
19 eight people that, "Oh, we've turned the corner."

02:02 20 Look at -- look at the \$2 million monitoring
21 documents. What? Plaintiffs' 13? Plaintiffs' 13, remember
22 that big stack I showed you some of it yesterday? With their
23 expert, their last one?

02:02 24 In that document, it shows that 15 people went to
25 the hospital just in the time frame they were doing this fancy

02:02 1 monitoring, the digging in the dirt -- just digging in the dirt
2 causes benzene exposure and other VOC exposure -- that there
3 were multiple odor events with people getting sick in that 315
4 days of monitoring and many, many, many were never sourced. I
02:03 5 mean, what does it take? The point is you have to inspect,
6 maintain, repair, and replace, not just monitor.

7 Now, why does this matter? Well, for every
8 person that goes in that plant -- every person has a story.
9 Sometimes you're walking down the street. If you think about
02:03 10 it, when you look at somebody, you say, "That person has a
11 story, and that person has a story." We're talking about
12 people, not just the workers themselves. We're talking about
13 people who have families. We're talking about what matters in
14 this life.

02:03 15 We're not talking about how much profit BP can
16 make or whether BP can cut staffing or -- really, inspections
17 or any of that now. We're talking about people. I mean, we're
18 talking about people.

19 I mean, Rosa did not sign on to go work out there
02:04 20 so she could get gassed and bring that home to her kids. I
21 mean, that's ridiculous. I mean, these are the people we're
22 talking about. These people have families, and they are loved.
23 And they should be -- they should get respect. And they
24 shouldn't be treated like criminals, and they shouldn't have
02:04 25 guards on them to go to the bathroom just because they got

02:04 1 sick.

2 Each one of those people are loved and treasured
3 by somebody in their family, every one of them. And they
4 should get the same dignity and the same respect not to be put
02:04 5 in a situation, with no warning whatsoever, and then treated
6 like criminals when BP does something wrong. That is not the
7 way to treat people. Frankly, that's not the way to treat
8 those workers, that's not the way to treat -- if you're a good
9 neighbor, that's not the way to act. That's just not the right
02:05 10 way to do things.

11 I mean, we saw on the stand all the TCEQ reports
12 when he claimed they were a good neighbor. They were gassing
13 people at Dow. I mean, come on. When does it stop? To BP,
14 these people are third-class citizens. That's a fact. And you
02:05 15 can tell by the way they treated them, the way they
16 cross-examined them, the way we set there for almost an hour
17 while they went through 20 years of medical. I mean, is that
18 ridiculous in light of the fact that I told you from the first
19 words out of my mouth in this case that no one was claiming
02:05 20 these people were ruined for life? Why do people that way?

21 At the end of the case, I'm asking you to give
22 each of them their medical damages. We put on a chart their
23 medical. And we got -- thank the Lord that we cannot prove to
24 you that their lungs are damaged. Thank the Lord. I'm happy
02:06 25 to say that. But goodness gracious, aren't they entitled to

02:06 1 have their treatment and their monitoring and their tests paid
2 for? Of course, they are.

3 You need to give each one of them the appropriate
4 amount of mental anguish damages and pain and suffering.

02:06 5 That's all in your province, and you have to decide what is
6 appropriate. And I'm not even going to give you a guide
7 because I know -- I've heard you-all laughing -- from outside,
8 when you-all were laughing and I know you-all have spent a lot
9 of time and I hope you-all have gotten to know each other well
02:06 10 enough and I hope collectively you come up with something
11 that's fair for these folks. Something that's fair. Because
12 we don't know for sure what's going to happen to them in the
13 future.

14 This is a time to hold BP responsible. This is a
02:07 15 time that we say, "You know what? You don't follow your own
16 procedures, and they're inadequate. Your equipment is old,
17 outdated, and dangerous. You're seven years behind. You
18 ignore, literally ignore, hundreds of leaks and releases yearly
19 that pollute our atmosphere and expose workers. That's not --
02:07 20 that is not the standard that we're going to allow in this
21 community, period, end of story."

22 How can a company not even be able to identify
23 all the many pollutants it exposes the workers to? How can
24 that be? We're not talking about just, you know, every now and
02:07 25 then it happens, a random event, a pipe breaks. You know, you

02:07 1 don't -- we're talking about something that anybody with common
2 sense could predict is going to happen because it happens over
3 and over and over again.

02:07 4 Now, at the beginning of this case, I said this,
5 I said this is an opportunity. Now, after I got out of the
6 Marines, I went to law school. My dad was a butcher; and being
7 a lawyer, first person, it was a big deal. And I didn't go to
8 law school to make a ton of money. Let me tell you what I
9 truly believe -- and I know some of you in the jobs you do try
02:08 10 to make a difference, too.

11 It's not just -- maybe it's making a difference
12 just for your children or maybe it's making a difference in the
13 medical profession or in a lawyer profession or whatever,
14 whatnot, but making a difference. I want to make a difference.
02:08 15 I want -- I want to effect positive change. OSHA can't do it.
16 TCEQ can't do it. I can't do it. He can't do it. The
17 president can't even do it here. There's eight people that can
18 do this, eight people. And that's you.

02:08 19 Now, tomorrow or whenever you render a verdict,
20 if you don't do it, then there's a responsibility at your feet
21 now. This is the first time all of this evidence has ever been
22 out in the open and been heard by a jury, and you have to do
23 something with it. You have a responsibility. TCEQ and OSHA
24 can't do it. The ISOM incident didn't do it. The incident on
02:09 25 January 14th, 2008, didn't do it. But you can do it.

02:09 1 How do you determine -- how do you deter and
2 change conduct? You know, I don't -- I don't even want to use
3 an example of a child because this is much -- much more serious
4 than that. This is much more serious. The ramifications of
02:09 5 what we're trying to do here are much larger than that. And by
6 that I mean, you know, use a little school example of, you
7 know, first you -- I'm a spanker. I'll just let you-all know
8 that. A spanking by one swat and then two swats and then all
9 of the sudden you're grounded, no X Box or whatever. That's
02:09 10 not a good example.

11 But the concepts and the principle is the same,
12 and that is this. When someone has been repeatedly punished
13 but their conduct doesn't change, then the punishment has to be
14 harsher. The punishment has to be harsher.

02:10 15 Now, how do you punish a \$3.9 billion company?
16 That's for you to decide, but you have to do it. Because if
17 you don't do it there will be another jury sitting here with
18 some other incident. There's no doubt about that. Because
19 history, if we don't learn from the lessons, has a way of
02:10 20 repeating itself. You have that responsibility. You've been
21 given the evidence. I've never seen evidence this strong
22 before. You have to do this.

23 Let's put in perspective, a hundred -- we hear
24 about billions and millions. Did you know that one million
02:10 25 seconds is equal to 11.5 days but one billion seconds is equal

02:10 1 to 32 years? That's the difference. That's the difference
2 between a million and a billion.

3 And, so, the way you punish a company like this
4 one is you -- you have to render a verdict that will make them
02:11 5 say, "You know what, the buck truly does stop here. We really
6 have to fix this issue now."

7 Maybe you'll do one percent of net worth or one
8 day of profit. I mean, what amount of money will it take in
9 punitive damages to make them pull their head out of the sand
02:11 10 and stop this corporate speak, corporate lip service, "We're a
11 good neighbor, we've turned the corner," all this jargon that
12 doesn't mean a flip when you compare it to the facts? You have
13 the power to make an impact, the power to effect change. This
14 is the time.

02:11 15 I, a couple of times in this trial, got very
16 frustrated. I got a temper. I'm sorry. And I have some
17 history with some of these witnesses, obviously. But I've done
18 my best to keep all my promises, and I believe I've done that.
19 And, so, I'm asking you now to do your duty because now the
02:12 20 responsibility is yours.

21 Thank you, your Honor.

22 THE COURT: All right. Thank you very much, counsel.

23 Why don't we go ahead take our break at this
24 point?

02:12 25 We'll break until -- take about a 15 minute'

0 2 : 1 2 1 break, and we'll come back and hear the closing argument for
2 the defense and the rebuttal.

3 You can leave those on your seat. Yeah, just
4 leave them on the chair.

0 2 : 1 2 5 *(Recess was taken from 2:12 to 2:36)*

6 *(Jury present)*

7 THE COURT: All right. Please be seated.

8 All right. Ladies and gentlemen, we're ready now
9 to hear from counsel for the defense.

0 2 : 3 6 10 You may proceed with your closing arguments.

11 MR. GALBRAITH: May it please the Court.

12 THE COURT: Yes, sir.

13 MR. GALBRAITH: Thank you, your Honor.

14 Hello. Workplace safety, we think that is what
0 2 : 3 6 15 is at the crux of this lawsuit. Workplace safety is very
16 important to BP. I'm happy that you've now seen just a little
17 bit about what all goes into that. You've had an opportunity
18 to meet just a few of the folks who devote their lives to
19 worker and workplace safety every day. It's important to us,
0 2 : 3 7 20 and it's important to our community; and it's an obligation
21 that we take very seriously. We work hard very hard every day
22 so that our workers can come to work and feel good about it and
23 so that our community can feel good about having us as a
24 neighbor.

0 2 : 3 7 25 We have had some serious attacks on BP in this

0 2 : 3 7 1 lawsuit, and I will address them. But I want to tell you that
2 our definition of a "good neighbor" and "being a good neighbor"
3 includes recognition of the fact that if BP believed that it
4 was negligent and that its negligence caused a release from our
0 2 : 3 8 5 plant and that that negligent release caused harm to anybody,
6 we recognize that we would be obligated to compensate them
7 fairly and reasonably. But we do not shy away from that
8 obligation. That's not the reason why we're here.

9 We are here because we have a real dispute about
0 2 : 3 8 10 what happened on the night of April 19th, 2007. The attacks on
11 BP, in our view, have nothing to do with April 19th, 2007.
12 It's easy to accuse a big company of being big and bad and
13 assume that they were the cause, but this trial is supposed to
14 be founded and based upon evidence.

0 2 : 3 8 15 We do not believe we were negligent. We do not
16 believe that our negligence caused a release from our facility
17 that night. We do not believe that our negligence caused harm
18 to any of these plaintiffs. That's the ultimate answer to
19 these questions.

0 2 : 3 9 20 I ask you to remember that every one of these
21 plaintiffs was employed by an employer in the State of Texas
22 that had policies in effect for how to take care of workers who
23 allege and claim on-the-job injuries. We had to check with
24 those employers before we could get medical care to them.

0 2 : 3 9 25 So, why are we here? This was a very unusual

0 2 : 3 9 1 event for us. Yes, we said that there are often times when
2 somebody reports a momentary odor five days later and we don't
3 find it or three or four hours later and we don't find it. But
4 to have this many people spread out over this much geography --
0 2 : 3 9 5 in other words, massive release -- and for us not be able to
6 find it was extremely rare and extremely unusual for us.

7 Okay. What happened April 19th? A hole watch --
8 and, by the way, this is all set out in Exhibit 2, our
9 investigation report. And I, too, would ask you to please take
0 2 : 3 9 10 a look at it, review it and read it, look through it. I think
11 you'll see something completely different than what Mr. Buzbee
12 thinks you'll see. But take a look at it, because you'll see
13 what I'm talking about in here.

14 On the evening of April 19th, a safety watch or
0 2 : 4 0 15 hole watch -- and I believe that her name was Natasha Craven.
16 She is not a plaintiff suing in this lawsuit. But she called
17 on the radio and said, "I smell something." We don't have any
18 doubt that that is true. We don't doubt that Natasha Cravens
19 honestly reported smelling something.

0 2 : 4 0 20 Okay. And what happened when the call comes over
21 the radio? What I hope and believe you've seen is that BP
22 jumped into action. Our investigation started immediately.

23 At that point nobody knew anything. But what you
24 heard is that within a minute or a minute and a half four BP
0 2 : 4 0 25 operators -- it's in our report -- Darwin Perren, Robert

0 2 : 4 0 1 Pacheco, Steven Boyd, and David Ferland -- I was wondering
2 whether I could remember all those names -- were climbing up as
3 others were climbing down. They were going to the towers armed
4 with their air testing machines.

0 2 : 4 1 5 Why were they going up? Because there were
6 continuous air monitors at every access portal on those towers.
7 They were going up because they honestly really wanted to get
8 to the bottom of this. They really wanted to find the answer.
9 Because they, too -- these are union guys, these are union
0 2 : 4 1 10 members, front-line workers. They, too, were committed to
11 workplace safety. It was a head-scratcher to them, too.

12 They tested the air immediately, and it was very
13 good. What we learned in those very first few minutes was very
14 good and calming, not alarming. Because they had those
0 2 : 4 1 15 machines that were able to rule out some very real potentials
16 or possibilities that could have been much worse.

17 But we know that they found no H2S at any level,
18 they found no VOC's at any level. They confirmed that at every
19 access portal the monitors were on and were working properly
0 2 : 4 2 20 and weren't registering anything, weren't in alarm status.
21 That's good. That rules out some things. First of all, it
22 rules out any stream being released that contains any H2S,
23 which, in turn, in just a few minutes rules out any release
24 from the SRU.

0 2 : 4 2 25 Okay. You've seen about how we checked our air,

0 2 : 4 2 1 we checked our plant, our equipment, and our processes and we
2 also checked out these people. That's good, in my mind, in our
3 minds. That's what you should expect from us.

4 We spent an extensive investigation. That
0 2 : 4 2 5 investigation has been attacked. I think that investigation
6 was honest and real, and I think it was robust -- I'll even say
7 that, too -- and vigorous. How about that?

8 And after that exhaustive investigation, all we
9 did was rule out any potential source on BP's property. Okay.
0 2 : 4 3 10 That's good. That's very good, but we didn't stop there.

11 One thing that must be remembered is that
12 originally, initially, no one seemed to be suffering. We got
13 them out. We got them off, but they weren't suffering. And
14 when that changed, the moment that that seemed -- appeared to
0 2 : 4 3 15 be changing, that's when the alarm sounded and that's when the
16 whole unit -- work was stopped and the whole unit was
17 evacuated.

18 Okay. I submit to you that that does not show,
19 that is not evidence of any conscious disregard. Rather, that
0 2 : 4 3 20 shows that we took worker safety seriously, right there. Okay.
21 First of all, the unit, we know, had long ago been shut down,
22 opened up, cleaned, purged, ventilated. People had been
23 working in it for months. Every shift for those months, air
24 readings, air measurements were taken; and they all came back
0 2 : 4 3 25 no alarm, calm, no concern. Okay. That's good.

0 2 : 4 4 1 The operators who went up -- Darwin Perren,
2 Robert Pacheco -- see if I can do it twice -- David Ferland,
3 and Steven Boyd -- there you go -- didn't smell a thing
4 themselves, didn't see any cloud, didn't get any hits, 0.0,
0 2 : 4 4 5 nothing but 0.0 on any of the monitors that they checked or
6 carried themselves. That's good.

7 The other thing that we know is that 450 to
8 500 workers were in that unit. Each one of them had an
9 H2S monitor, personal monitor, on their -- on the collar of
0 2 : 4 4 10 their overalls. Now, BP requires that every employee, every
11 worker, every contract worker have one of those H2S monitors.
12 BP pays for those monitors. That's a good thing. That's a
13 commitment to worker safety. And none of them, not a single
14 one, registered any H2S.

0 2 : 4 5 15 In addition to that, we had fixed monitors for
16 H2S all over the plant and we had continuous monitors up at the
17 access portals of this -- of these towers. Okay. We didn't
18 stop there. This is all good so far.

19 We checked with the surrounding units, "Any
0 2 : 4 5 20 upsets, any problems, any startups, any shutdowns, any
21 equipment failures, anything coming off line?"

22 "No problems, steady state, steady as she goes,"
23 upwind and down.

24 We didn't stop there. We called out our
0 2 : 4 5 25 industrial hygienists from their homes that night. Why?

0 2 : 4 5 1 Because they could broaden the search. They first took their
2 air reading instruments to the plant -- the unit, then the
3 plant, then the community; and they found nothing. That's
4 good.

0 2 : 4 5 5 You have heard that leaks don't fix themselves.
6 Our experience is such that if you have a leak like this it
7 doesn't get smaller, it gets bigger. If you have a pump seal
8 that fails -- and it can fail without negligence. It can fail
9 within its useful life. It can fail without any foreseeability
0 2 : 4 6 10 or anticipation, but it's not going to seal itself. It's going
11 to get worse.

12 And if you have a pipeline that springs a leak
13 somewhere, it's not going to seal itself up, it's going to get
14 bigger, and it's going to get worse. Leaks don't fix
0 2 : 4 6 15 themselves, and that's why we called out LDAR, the Leak
16 Detection and Repair team.

17 Now, what did they add to the investigation?
18 They have their unique, new infrared cameras, hundred thousand
19 dollar cameras, that can actually see volatile emissions that
0 2 : 4 6 20 you can't see with the naked eye. They can see it from
21 distances. And we called them out and they scoured our plant
22 and scoured our plant perimeter, focusing their cameras
23 virtually all night long back and forth. And they found
24 nothing, and that's good.

0 2 : 4 7 25 They found one thing, though; and you've heard

0 2 : 4 7 1 about it. On the southeast corner of our plant at Loop 197 and
2 around 14th Street, every time they went around the plant, they
3 would stop there and focus their camera.

4 MR. BUZBEE: I'm sorry, your Honor. I don't mean to
0 2 : 4 7 5 object; but there's no evidence of this whatsoever in this
6 record, none.

7 THE COURT: I'm going to instruct the jury that you've
8 heard the evidence in this case and caution both counsel not to
9 refer to anything that's not evidence and did not come from the
0 2 : 4 7 10 witness stand or documents admitted. So, ladies and gentlemen,
11 you'll recall the evidence in this case, the testimony. We'll
12 rely upon that.

13 Let's proceed.

14 MR. GALBRAITH: Dyron Hamlin, you may recall, we asked
0 2 : 4 7 15 him what was the scope and measure, extent of his
16 investigation. He talked about how that night it was
17 significant to him that the LDAR technicians had stationed
18 themselves or positioned themselves on the southeast corner of
19 the plant at Loop 197, by 14th Street, and they smelled acetone
0 2 : 4 8 20 when the wind was coming from the southeast.

21 And you may remember that what was said was that
22 they focused their cameras that way but they couldn't see
23 anything. Acetone, we don't think comes from Valero; and
24 there's no acetone at BP. So, it came from farther away than
0 2 : 4 8 25 that.

0 2 : 4 8 1 But every time they came to the southeast corner
2 of the plant, when the wind was blowing from the southeast,
3 they smelled acetone. And it's interesting to me that the most
4 frequent odor characterization reported that night, other than
0 2 : 4 8 5 "I didn't smell anything at all," which was number one, was,
6 "It smelled like acetone," or nail polish remover.

7 Okay. We didn't stop there. We went to the
8 fixed based monitoring stations. Now, this is not BP. These
9 are the monitoring stations operated by the City of Texas City
0 2 : 4 8 10 and TCEQ. And he's right in saying that it doesn't
11 specifically set out a blip for CS2, just like the UltraRAE.
12 It will pick up volatile organic chemicals. And if CS2 is in
13 the air, it will be registered as a VOC. It won't say it's
14 CS2. It won't say it's benzene. It won't say it's anything.
0 2 : 4 9 15 It will say it's a hydrocarbon, it's a VOC.

16 Okay. Those same monitors, they didn't have a
17 CS2 monitor; but they did detect the VOC's and hydrogen
18 sulfide. And they picked up nothing. That's not us. That's
19 the City of Texas City and TCEQ.

0 2 : 4 9 20 And we called out what we refer to as the
21 "professionals," CTEH, Center for Toxicology and Environmental
22 Health. They did come within hours, because they had somebody
23 in the plant monitoring another welding operation somewhere
24 else. But the real guys to investigate this, that set up those
0 2 : 4 9 25 huge monitors, didn't show up for 24 hours. But CTEH was on

02:49 1 the site earlier than that, at least that's the evidence. And
2 they were there for 315 days, at great expense, just to provide
3 worker assurance in the quality of the workspace and the
4 quality of the worker environment.

02:50 5 That's not evidence of a conscious indifference.
6 A consciously indifferent company would not do that. That's
7 evidence that BP takes worker safety seriously.

8 I thought it was very interesting that we set up
9 meetings and we had the toxicologist attend those meetings.

02:50 10 There were three meetings on April 26th and April 27th, two in
11 English, one in Spanish with an interpreter, not in Spanish but
12 with an interpreter. Every turnaround worker on
13 Pipestill 3B -- it was scheduled so that every turnaround
14 worker on Pipestill 3B could attend one of those meetings to
02:50 15 get their questions answered, to provide some worker assurance.

16 Dr. Goad said he stayed around after the meeting,
17 to answer anybody's individual questions, and quite a few
18 people stayed and did ask individual questions. And the point
19 is, a company that doesn't care wouldn't do that, wouldn't pay
02:51 20 attention to -- wouldn't care about worker assurance. But BP
21 did. It's another example of BP being attuned and attentive to
22 the workers' needs and the workers' concerns. We took worker
23 safety very seriously; and we demonstrated it in countless,
24 countless ways.

02:51 25 One other very good thing that we did is we

0 2 : 5 1 1 checked on the people. We brought out EMTs and licensed
2 paramedics that night, from their homes, and we set up a clinic
3 and we listened to everybody's lungs and listened to
4 everybody's heart and filled out questionnaires so that we
0 2 : 5 1 5 could make sure, "Do you need -- do you feel any need, concern,
6 or care at all? Do you want to see medical care? Do you want
7 to be checked out? Do you want to be evaluated?" And after we
8 got agreement of the employers, we also called out our buses to
9 take them there.

0 2 : 5 2 10 Now, I have to tell you that there's been some
11 talk about the procedures at the hospital that perhaps were not
12 the most sensitive. And I think, as a community, we probably
13 need to pay a little attention to that and see if we can't, as
14 a community, address that issue. But those were not our
0 2 : 5 2 15 policies and procedures, and BP is not liable unless BP was
16 proven to be negligent in such a way as to cause these
17 injuries.

18 Okay. We didn't stop there. We collected wind
19 data. And I'm going to tell you that everybody that night knew
0 2 : 5 2 20 the wind was from the southeast. There was no dispute; there
21 was no disagreement. But we collected wind data. This is what
22 you've heard here in this trial.

23 You remember Charles Taylor, or Chucky T, as he
24 was referred to? He said he smelled it first at the pipestill
0 2 : 5 3 25 and then went and got in his truck and drove to Gate 26, which

0 2 : 5 3 1 was northwest; and as he put it, "It followed me to the
2 northwest."

3 Remember Johnathen Vallery -- I'm going to come
4 back to him in the minute -- one of the first plaintiffs. Both
0 2 : 5 3 5 of those are plaintiffs in this lawsuit, by the way.

6 My point is no one worked harder to get to the
7 bottom of this, no one worked harder to find this answer than
8 we did at BP. It was an honest and real effort.

9 Okay. After CTEH's investigation, they presented
0 2 : 5 3 10 their findings to us and they said the most likely source came
11 from off site; it couldn't have been on site because of the
12 geography of the observers, the geography of the smellers; it
13 had to come from far enough away that it could disperse enough
14 over distance to reach this large mass of observers.

0 2 : 5 3 15 Have we identified exactly, pinpointed the exact
16 railcar or the exact ship that might have been loading or
17 unloading acetone that night? No. No one can. But it's not
18 for lack of effort. It's not for want of trying. No one tried
19 harder than we did.

0 2 : 5 4 20 Okay. We have heard now that the data from the
21 scientists tell us that the likely source was at the rail yards
22 or the shipyards. And we also know that they were unloading
23 acetone that very night, loading and unloading, handling
24 acetone that very night.

0 2 : 5 4 25 Two things about that. Number one, there's no

02:54 1 acetone on our plant. Number two, they handle it off site.
2 Our industrial neighbors do have it, do load it, and do unload
3 it. And we've now seen records that indicate they were doing
4 that that very night, when our LDAR folks were smelling it
02:54 5 coming from the southeast, coming across our plant.

6 It is the plaintiffs' burden to show you that the
7 source was on our site. It is the plaintiffs' burden to show
8 you that our negligence caused a leak on our site. What have
9 they brought to do that?

02:55 10 Okay. For at least the first week, they brought
11 you a whole lot of stuff that, in our mind, had absolutely
12 nothing to do with April 19th, 2007. We have -- our witnesses
13 have been what I'm going to call a little bit "beaten up" about
14 our history and attacked a little bit about our past. It had
02:55 15 nothing to do with April 19th, 2007.

16 There is -- why did they do that? Why did they
17 do that? Two reasons. Number one, because they don't have any
18 evidence of an onsite source. What is the piece of equipment
19 that supposedly failed from lack of maintenance? What is the
02:56 20 unit that supposedly failed for of lack of maintenance? Can't
21 be the SRU.

22 The second reason is because we have a tortuous
23 history and tortuous past leading to the ISOM event in early
24 2005. That's our history. We have never denied it. We've
02:56 25 never shied away from it. We don't think it has a thing to do

02:56 1 with April 19th, 2007; but that history is ours. We own it.

2 We recognize that we -- it will take time for us
3 to earn the trust of our community. We're intent upon earning
4 that trust, and we feel that we've not only turned the corner
02:56 5 but we're well along the way. We recognize, though, that
6 because of that history we have to be extra diligent in
7 situations like this. And I think that you've seen in our
8 response to April 19th, 2007, that we were. We take incidents
9 like this very seriously.

02:57 10 Under the guidance of Keith Casey, who I'm happy
11 to represent, the agenda has been continuous improvement. We
12 work hard every day to make the place safer and better every
13 day. We will all -- after all, we were the ones who shut down
14 the whole plant after Hurricane Rita, shut down the whole plant
02:57 15 for a complete rebuild, replacing pipe, updating units, not
16 producing anything, and bringing them up one by one only after
17 they had been completely rebuilt and had a pre-startup safety
18 review that's fairly arduous.

19 And, in fact, plaintiff says our plant is old.
02:57 20 Every unit that was back up and running by April 19th, 2007,
21 was basically brand new, completely overhauled. And, indeed,
22 that's what Fluor was doing in Pipestill 3B. And that's what
23 each one of these plaintiffs was doing; they were doing the
24 same thing to Pipestill 3B. BP was paying hundreds of millions
02:58 25 of dollars to rebuild our plant to make it better.

02:58 1 Now, you've heard that Fluor fenced off this
2 Pipestill 3B Unit and was in total control of the turnaround.
3 So, an indifferent company might turn your eyes away and say,
4 "Call me when you're done." BP didn't do that.

02:58 5 In spite of the fact that Fluor had complete
6 control of the operation and their own safety people in -- on
7 place, in site, we had our BP folks, safety operators, in there
8 checking every job, every work site, sniffing, issuing permits,
9 confined space entry, LOTO.

02:58 10 I want to say we've thrown a lot at you guys. We
11 got a lot of faith in you guys. We've talked about CS2. Your
12 lives are forever changed. Forever and the rest of your life
13 you're going to know what CS2 is and H2S and a TAR is a
14 turnaround and LOTO, even LOTO, when somebody says they won the
02:59 15 LOTO, you'll say, "Lock out/tag out?" That was a little aside.
16 But we do have a lot of faith in you.

17 The point is BP didn't just turn their eyes away
18 and say, "Call me when you're done." They made sure that they
19 were out there testing and sniffing and issuing permits and
02:59 20 being around in case there was a need for a response like we
21 could provide on April 19th, 2007. That's not the face or the
22 actions of a company that is indifferent. That's the face of a
23 company who is trying to get better every day and who is intent
24 upon earning the trust of the community, as a good neighbor.

02:59 25 Okay. Now, when something like this happens, we

02:59 1 said, initially nobody knows anything. You have to
2 investigate. Ours started immediately. We checked the air; we
3 checked our equipment; and we checked the people. How can it
4 be said, therefore, that we were consciously indifferent, that
03:00 5 we consciously disregarded?

6 We appointed a committee after all of this, after
7 everything that we'd done that we talked about that was
8 calming, not alarming. We appointed a committee. Six people
9 five weeks away from their jobs, three union members, their
03:00 10 sole mission was get to the bottom of it, find the answer.

11 Now, I submit to you that if you are a company
12 which is desiring a cover-up the last thing you would do is put
13 three union members on your committee. Because the union
14 members are the last people on earth who would sweep worker
03:00 15 safety under the rug. They didn't.

16 Read that Exhibit 2. Take a look at it. See our
17 investigation report. What did we find? We found that there
18 was no leak, no release from the BP plant property. We ruled
19 out every potential source on our plant. We found it logical,
03:01 20 supported by science that it was one of our industrial
21 neighbors. That has happened before.

22 There is no way it could have been an onsite
23 source and spread out as quickly as it did. There's no way
24 that an onsite source could explain the geography of these
03:01 25 observers. Doesn't happen. It had to come from farther away

03:01 1 to have enough distance to dissipate to reach these people.

2 Okay. Why are we here, and what have plaintiffs
3 brought? They brought some theories from time to time, but I
4 say no evidence. And, by the way, another example of folks,
03:01 5 what we can know about people on site at the time, what's their
6 indication of wind direction, what's their training? They're
7 to evacuate downwind or upwind -- upwind or crosswind, and
8 everybody evacuated southeast.

9 Okay. One thing I say about the truth and that
03:02 10 is, it never changes. It's simple, and it never changes. One
11 thing about plaintiffs' theories, they're always changing.
12 They sued us immediately and they jumped to the conclusion that
13 they had the answer, they had the culprit, they knew what it
14 was, and they said, "We were exposed to H₂S, hydrogen sulfide."

03:02 15 Now, that is at a time very early. They had done
16 no investigation, they had gathered no data, they had no wind
17 data, even; and they were completely unaware that every worker
18 on the unit had on his collar a hydrogen sulfide, H₂S, personal
19 monitor, 450 to 500 of those and not a one of them registered
03:03 20 anything. In addition to that, the fixed monitors you've seen
21 all over the plant and the continuous monitors up the tower,
22 the access portals -- that's a new word I got to learn.

23 Okay. When they figured that out, they said,
24 "Okay. We were wrong. You were right. We rule out H₂S, like
03:03 25 you did long ago." And, so, they arrived at the theory that it

03:03 1 was a toxic soup. Remember? H₂S, SO₂, and CS₂.

2 But then -- and that was before the mask was ever
3 tested when they came up with that theory. But then they have
4 since found for reasons, scientific, that convinced them they
03:03 5 had to concede, "We rule out H₂S, and we rule out SO₂. Again,
6 you were right; and we were wrong. It wasn't any soup."

7 Okay. So, now they say it was CS₂ from the
8 SRU Unit. But now we know that CS₂ only exists in the plant in
9 the SRU and it only exists in a stream where there's 265 times
03:04 10 of H₂S or more. And how do they even know that? Just like
11 everything in this case, they know it because we write it down
12 and report it. It comes from us. They came up with the theory
13 that it was CS₂ and we -- that was a head-scratcher because we
14 have never released CS₂, ever. No refinery does.

03:04 15 But we asked the question. We tracked it down.
16 We followed up; and we found that, yes, for a few seconds in
17 the SRU, we do create, in the process, a little bit of trace
18 elements of CS₂ in a stream that's overwhelmed by the amount of
19 H₂S; and it's consumed in there, and it never exists without
03:05 20 H₂S. You can't get one without the other. They come together.

21 We told them that. But it was still a
22 head-scratcher because we've never had a CS₂ release. And this
23 is part of the reason why: because they come together. And if
24 you get any CS₂ out that would do anything, even if you get
03:05 25 their original calculation of 12 parts per million, which they

03:05 1 now agree wouldn't hurt a flea so it couldn't have been 12
2 parts per million -- but that was their original calculation --
3 you would get 3,180 parts per million of H₂S that would come
4 with it.

03:05 5 Remember, no H₂S monitor alarmed anywhere that
6 night on the SRU, on the Pipestill 3B, fixed monitors, personal
7 monitors, or the continuous monitors up the tower. And, by the
8 way, even at that low dose, 3180, you would be talking about
9 very dire -- not only would it be picked up on monitors, but it
03:06 10 would have very dire toxicological consequences. If someone
11 breathed that amount for less than a minute, death could result
12 from that exposure. That's why we don't have those releases.
13 That's why we don't release CS₂. That's why we can rule out
14 the SRU. You're just not going to find it in the refinery.

03:06 15 Here's the H₂S fixed monitors at the SRU that are
16 designed to provide worker assurance and worker safety.

17 Okay. Why are we here? What have plaintiffs
18 brought? They found a mask. And the mask was so important --
19 by the way, there's no protocol, nobody tests masks like
03:06 20 they've done. There's no protocol in science. Nobody's ever
21 figured that out that that's a good thing to do.

22 But this mask was so important that they let it
23 sit for months in a smoke-filled office. And Mr. Buzbee says
24 that it was on the opposite side of his office suite, but
03:07 25 there's no evidence of that. No one testified to that.

03:07 1 We know it was mishandled. We know it was
2 mishandled because Armstrong Labs found it, got it, and sent a
3 letter saying, "Oh, my gosh. It's been opened. It's unsealed.
4 You can't rely on the results. Do you want me to run it
03:07 5 anyway? I'll do it if you want to send me the money, but you
6 can't rely on the results. Do you really want me to do it
7 anyway?"

8 And Buzbee said, "Run it anyway."

9 Okay. And, so, Armstrong comes back again, says,
03:07 10 "Well, if I'm going to do it anyway, I've got to have a
11 comparison mask. If I'm going to find so-much sulfur, I got to
12 know how much is in there to start. Could be a lot, could be a
13 little because it varies significantly from lot to lot. I got
14 to have a comparison mask."

03:07 15 They said, "Well, we can't find one. We don't
16 have one."

17 And this time they didn't write a letter. They
18 called and they said, "Do you really want me to do this? Can't
19 rely on it."

03:08 20 And Buzbee said, "Run it anyway."

21 Okay. Now, they finally said it had some CS2 on
22 it. But yesterday we learned from Dr. Goad -- it's in the
23 Armstrong report -- that you can't conclude what he concludes
24 from it because of all the unintended interferences that could
03:08 25 show up on his test read as "CS2." I guess we're just supposed

03:08 1 to ignore that.

2 But through that all, despite how much of this
3 case is hung on this mask and how frivolous and inconsequential
4 and how unreliable that is, the fact remains you don't get CS2
03:08 5 from a refinery, never have. There's never been a report of
6 CS2 coming out of a refinery ever. Not just ours, any
7 refinery. Refineries just don't have it.

8 Now, we do have it momentarily in small
9 quantities in the SRU, accompanied by huge quantities of H2S.
03:09 10 That's why it's there. Anything that comes out of there goes
11 to a flare, not to protect from CS2 but to protect from H2S
12 which can hurt you.

13 Okay. So, when we look at this, we think the
14 plaintiffs have not really attempted to answer the questions
03:09 15 about what was the source. They just want you to assume that
16 we're big and bad and so it had to be us. But the fact remains
17 there was no sufficient source of CS2 anywhere on our plant.
18 The fact remains leaks don't fix themselves.

19 Has there been any dispute of that? Has anybody
03:09 20 testified that that's not a valid point, that you would find it
21 later? Is there any evidence contradicting that whatsoever?

22 And, further, the odor could not have come from
23 the SRU. I am particularly enamored of this slide because it
24 shows all the variations, if you will, one on top of the other.
03:10 25 It can't be explained by, "Well, there's eddies in the wind or

03:10 1 wind currents or something such as that." You have got guys
2 shoulder to shoulder, some smelling it, some not smelling it,
3 some having symptoms, some not having symptoms. It doesn't
4 match.

03:10 5 Now, you remember Johnathen Vallery. I mentioned
6 that. In terms of the wind being out of the southeast, it was
7 interesting to me one of the very first witness that testified,
8 he is a plaintiff in this lawsuit, he is represented by
9 Mr. Buzbee, and I think you'll -- I'm sure you will remember
03:10 10 him. He's the guy who said, "I went to the road at the south
11 of Pipestill 3B." It was east and west. "I went to the road."

12 I don't know if that's east or west or not.
13 Okay.

14 "I went to the south edge of 3B. And the road is
03:10 15 east and west, and I smelled a smell coming from the southeast.
16 And I turned and I walked along that road for a block and a
17 half to my truck. And the whole time, the smell was being
18 brought to me from the southeast. And I smelled it the whole
19 time I walked, and the whole time the wind was coming from the
03:11 20 southeast."

21 And Mr. Buzbee asked him, he said, You don't
22 remember much about that wind, do you? How much was it
23 blowing?

24 And he says, Well, it was blowing medium.
03:11 25 Remember him saying it was blowing medium?

03:11 1 And he said, "Well, you don't know much about
2 direction, do you? You say it was out of the southeast, but
3 you don't know which direction the southeast is from?"

4 And he said, "Yeah, it was coming right here.
03:11 5 The whole time that I was at the south road, walking a block
6 and a half to the west, I smelled it coming from the
7 southeast," by the way, right from to the southeast corner of
8 our plant where the LDAR folks smelled acetone.

9 Everybody knew the wind was out of the southeast
03:12 10 that night. It was reported in the first calls. It was
11 reported on the radio. All the people who opined -- we've
12 talked about all the wind socks that are out there. You can't
13 stand anywhere in that plant without seeing a wind sock. One
14 of the first things you do if there's an odor report is look
03:12 15 and see which way the wind's blowing. Why? You heard the
16 plaintiffs say, "We're all trained to do that because we need
17 to know which muster point to evacuate to, which way to go.
18 It's the first thing we do."

19 Totality of the evidence supports that the wind
03:12 20 was out of the southeast. I mentioned it in opening, and I'm
21 not going to belabor it now. But the symptoms, the odors, and
22 the duration of symptoms just aren't supported, don't match,
23 can't all be meshed with the facts. Remember, objective signs
24 and tests, all normal all the time.

03:12 25 Okay. Logic tells us and the science tells us

03:13 1 that the source was off site, from one of our offsite
2 neighbors. There are many. There's docks; there's rail yards
3 in addition to oil tanking, other industry members that store
4 chemicals, load and unload chemicals. We cannot pinpoint the
03:13 5 exact location, but we tried. We tried hard, and we tried
6 honestly and we tried real.

7 But what we do know is that the most common
8 report after "no smell at all" was "acetone." And we know that
9 upwind of us, acetone was being handled that night. It's the
03:13 10 plaintiffs' burden to show that this occurred from an onsite
11 source that we negligently caused and that it thus caused --
12 our negligence caused harm to these folks.

13 I submit to you that we would not be subjecting
14 ourselves to the abuse of this trial if we had any belief that
03:14 15 we were negligent. We believe we did a good job that night.
16 We believe that we took this very seriously. We still believe
17 we handled this incident with professionalism and with respect,
18 with professionalism and respect for the workers and for worker
19 safety. We took worker safety very seriously.

03:14 20 Now, the plaintiffs -- we have to look at the
21 plaintiffs, and I will tell you right up front we have no doubt
22 that some people sometime that night somewhere smelled
23 something that came across our plant. But we have to look at
24 the plaintiffs' claims. Many that night said, "I didn't smell
03:15 25 anything." Now they say they do, they did.

03:15 1 Many that night said they didn't have any health
2 complaints; now they said they did. No one that night
3 mentioned anything about being held prisoner; and, of course,
4 we've heard a lot about that now.

03:15 5 All at the time said they had lasting effects;
6 but now we know plaintiffs' own toxicological experts
7 characterizes this as something that should be expected to be
8 temporary and transient and, in his words, hours to days,
9 before he found the Spyker article which convinced him that it
03:15 10 could be up to nine days or even two weeks. But the Spyker
11 article, we have seen, preceded the OSHA guidelines we relied
12 upon and that was CS2 that had been combusted. It caught fire.
13 And what the guidelines tell us is it's the combustion process
14 that makes CS2 irritating.

03:16 15 And even the firefighters who were exposed to the
16 irritating combustion process, the fire of CS2, had no signs or
17 symptoms after the, quote, first few pre-exposure days --
18 post-exposure days, first few post-exposure days.

03:16 19 Okay. They also said they have had lasting signs
20 and symptoms in spite of the fact that they were all seen,
21 medically treated by doctors. They were examined and had their
22 lungs listened to. They had their hearts listened to. And
23 they were seen and released to return to work without
24 restrictions, without medications, without follow up, without
03:16 25 recommendations for anything, without any abnormalities on

03:16 1 physical exam and without any abnormalities on objective
2 testing.

3 You remember at the first start of this lawsuit,
4 in opening I asked you to keep a lookout for any objective
03:17 5 tests that were abnormal. We're talking about lab studies,
6 blood studies, x-rays, and pulmonary function studies. Those
7 are the tests designed to let us know if there has been any
8 significant exposure. And the evidence is all in now; and all
9 of the objective testing is normal, all normal all the time.

03:17 10 And some of the plaintiffs told their doctors,
11 doctors chosen by Mr. Buzbee, that they had no prior similar
12 conditions. We now know that at least eight of them, in their
13 medical records, had prior medical conditions.

14 Mr. Munoz would like a significant sum of money
03:17 15 for a surgery that, in my mind, he has not done much to show
16 that he really needs it and is ever going to seek it. What he
17 has done is repeatedly failed to show up at appointments, and
18 what he did do is fail to tell his doctor about any prior back
19 problems that we now know he had.

03:18 20 Mr. Buzbee says that I told you in opening the
21 real reason he is here is for punitive damages. And he had
22 each plaintiff, at the end of their testimony, tell you, "I'm
23 here to send BP a message."

24 In Texas punitive damages are limited to special
03:18 25 situations where people in power at a company subjectively were

03:18 1 aware, really knew of a significant risk of harm and injury,
2 and yet they acted in a way that demonstrated that they just
3 didn't care. There's no evidence of that here. Rather what
4 you have seen is a very real, a very honest, a very robust, a
03:18 5 very expensive continual commitment to worker safety. That's
6 not conscious indifference.

7 And -- okay. They want to talk about our
8 problems in the past and our history which has led us to be
9 under very close scrutiny by the authorities and the agencies.
03:19 10 We don't shy away from that. That's okay. That's fine. But
11 OSHA came out -- as a part of that scrutiny, we know we've got
12 to be extra diligent. As a part of that scrutiny, OSHA came
13 out after April 19th, 2007, to investigate. And they had lots
14 of questions and they got their questions answered and they
03:19 15 cleared BP.

16 OSHA is doing that job. They did it following
17 April 19th, 2007. They got answers to their questions.
18 There's nothing outstanding regarding April 19th, 2007; and
19 they cleared BP. That's no evidence of conscious indifference,
03:20 20 certainly not regarding April 19th, 2007.

21 Okay. And any OSHA fines, while they are
22 directly definitely punitive, they go to the public bureau to
23 enhance enforcement. Okay. OSHA is doing that job. We don't
24 shy away from that, but we don't feel we should have to pay
03:20 25 additional money to these plaintiffs or Mr. Buzbee just because

03:20 1 that's why he's really here.

2 Now, finally, the Judge has said that you are to
3 evaluate this evidence on the strength of the witnesses'
4 testimony, what evidence came to you from the witness chair,
03:20 5 not what either of us lawyers had to say. Okay. Mr. Buzbee
6 said that his office protected the mask from his cigars. No
7 one testified to that. He should have brought you evidence
8 that the mask was handled properly, but he didn't.

9 He says he got an anonymous call that a seal was
03:21 10 replaced at a sour water tank. No one testified to that; but
11 yet again we followed up, we tracked it down. We found
12 Tank 100, the sour water tank, and we looked at its history and
13 its record and its maintenance logs; and it showed the last
14 time the seals were replaced was in 2004. Those seals have a
03:21 15 10 year expected useful life. They are scheduled to be
16 replaced again in 2014. But in the interim, they are inspected
17 regularly; and there's never been any leak.

18 Mr. Buzbee, remember he said that the sewers
19 could have been the source because, after all, they're all
03:21 20 connected? Nobody testified to that. But, again, we tracked
21 it down. What we learned is that there's no pipe, there's no
22 connection between the SRU and the sewer system. Couldn't have
23 happened. We tracked that down. It's bluster, but it's no
24 evidence.

03:22 25 This case is about the evidence, and the evidence

03:22 1 just isn't there. That is why we are here.

2 Okay. Please take a look at our investigation
3 report. I think if you read it, you will see that it is a real
4 and an honest effort. Those guys on that committee really
03:22 5 tried hard to get to the bottom of this, and all they could do
6 was rule out all potentials on site.

7 Did plaintiffs prove to you that the exposure was
8 to CS2? Did they prove to you that there was something on our
9 plant that leaked it, that that leak was caused by our
03:22 10 negligence? No. That all of this was due to our conscious
11 disregard? No. There's no evidence of that.

12 We submit that he's failed on each of those and
13 that those failures answer the questions in this Court's
14 charge.

03:23 15 Okay. Almost done. You ready?

16 THE COURT: You got about 12 minutes.

17 MR. GALBRAITH: Thank you, your Honor. I hope to give
18 some of that back.

19 We're here because we have faith in you and faith
03:23 20 in this process. We have respect for your ability to separate
21 right from wrong and to separate fact from fiction and to hold
22 burden -- plaintiffs to their burden of proof.

23 I would like to take a moment just to say
24 something personal, which I don't normally do. I went to law
03:23 25 school, too, to engage myself in an honest effort to search for

03:23 1 the truth. But I thought I could help make the world a better
2 place and make our system of justice work better. And I've
3 always thought that I could help people honestly resolve
4 disputes by seeking the truth, and I've always felt that the
03:24 5 truth will set us free. And BP has never asked me to deviate
6 from that course. And I'm very, very proud to represent folks
7 like Keith Casey, Joe Trapp, Mary Clark, Ken Panozzo, and
8 Darwin Perren.

9 That's who BP is. It's these people. And these
03:24 10 are good people. And I'm proud to represent them. Oh, and
11 they've been beat up on that witness stand. There's no
12 question about it. But let me tell you and let me assure you
13 that they are undeterred and they are resolute and their focus
14 is fixed on their mission of enhancing worker safety all day
03:24 15 every day for the good of us all.

16 And I'm thankful that we have folks like them in
17 our industries and in our country. You will never see us
18 embrace fantasies, promote known falsehoods, tell half truths,
19 show portions of a document, or try to mislead, all to win at
03:25 20 any cost. Because that is not winning to me.

21 Okay. I feel it's a great privilege for me to
22 try this case before you. I hope that I -- that we have never
23 told you anything that wasn't supported and borne out by the
24 facts and by the evidence. We've tried real hard to make sure
03:26 25 that's the case.

0 3 : 2 6 1 I hope that we have been respectful, because we
2 have striven mightily to show you respect and to show this
3 Court respect and to show respect for this proceeding and,
4 quite frankly, to show respect for these plaintiffs. I think
0 3 : 2 6 5 that's important, too. And maybe, through all of that, you've
6 seen just a little bit of taste of our care and our concern for
7 worker safety. We took worker safety very seriously.

8 We've thrown a lot at you, a lot of terminology,
9 a lot of acronyms. You've learned a lot of organic chemistry,
0 3 : 2 6 10 quite frankly, and a lot of toxicology. You'll always know for
11 the rest of your life "dose differentiates poison from cure."
12 That was true in 1500, and it's true today.

13 But one reason we're here is because we have
14 confidence in you. We have confidence that you get it, you
0 3 : 2 6 15 understand what's at work here, and what's going on here. And
16 with that, I look forward to your verdict; and I thank you for
17 your attention.

18 THE COURT: All right. Thank you very much, counsel.

19 You got ten.

0 3 : 2 7 20 MR. BUZBEE: Yes, sir.

21 In 1993 I was in Somalia, and we had snipers on
22 the roofs of the buildings so the humanitarian aid workers
23 could hand out aid. And had we not warned the workers and
24 protected the workers from injury or death from the roving
0 3 : 2 7 25 gangs that were roving throughout Somalia, it would have been

03:27 1 criminal, because that was our responsibility and that was our
2 duty. And this lawyer, who's been representing this company,
3 has made a ton of money with all the problems they've had over
4 the years, stands up here and tells you things that I know for
03:27 5 a fact are not true. And it's very, very insulting. There are
6 motives in this case. There are people making a lot of money
7 in this case, over at that table.

8 Where is the conscious indifference? Twenty
9 hours before this happened, five workers were sick. The report
03:28 10 was minimized. They didn't source the problem; they didn't put
11 in place air monitoring; and they sent them back in. That's
12 called "conscious indifference," especially when you put it in
13 context, when you've had 500 releases and spills and leaks in a
14 four year period, especially when you've had 193 in a six-month
03:28 15 period. That's called conscious indifference.

16 You're spending \$2 million to go out there and
17 set up this fancy monitoring -- that, incidentally, people
18 continue to get sick and go to the hospital -- and spend
19 2 million bucks and come here in front of a jury and say, "Boy,
03:28 20 we really care about the workers," in light of your record, you
21 should be laughed out of this courtroom. You can say anything
22 in a court, obviously; but, obviously, it doesn't have to be
23 true. Let's just take one example.

24 Can you pull that up?

03:29 25 This lawyer, who said, "I tried my best to be

03:29 1 honest with you ladies throughout this trial," remember he said
2 the monitoring stations down in Texas City, they tested for
3 VOC's? Remember that? Remember when I said they don't test
4 for carbon disulfide and that's why this -- when the wind
03:29 5 shifted -- remember, the release happened on the plant.
6 Everybody started recognizing the wind after they started
7 getting sick. Well, we know the wind shifted and started --
8 and started coming out of the southeast. That's given.

9 But the wind before, the wind that supposedly was
03:29 10 bringing this stuff in from some phantom site, it was from the
11 north. It was only after everybody started getting sick the
12 wind shifted and took it off site; and if it went southeast, it
13 went directly into Texas City proper.

14 They do not test for carbon disulfide in Texas
03:29 15 City. He stood in front of you and told you that they did; and
16 he's done that repeatedly in this trial, tell you things that
17 are demonstratively false. Do you see VOC testing anywhere
18 there? No. Because they don't test for VOC's. They test for
19 specific chemicals. Carbon disulfide is not one of them.

03:30 20 He can say things, but he's got to have proof.
21 He just talked about -- this lawyer has been in my law office.
22 I'm not a liar. He knows I had this fancy system because of
23 one worker, one female, who was pregnant and I was very
24 sensitive to it because my wife would have kicked me in the
03:30 25 rear had I not been. He knows it. He has been in my office.

03:30 1 He sat in my office, but yet he stands in front of you and
2 tells you something he knows is a baldfaced -- I'm sorry --
3 lie.

4 That's credibility. That's what this is about.
03:30 5 And you know what, you choose your lawyer based on who you are;
6 and he is a personification of BP. And that's a fact.

7 The testimony was, "We were told at BP we would
8 leave in the same condition we came in." That did not happen.
9 That's worker safety. They failed. Where are these fancy
03:31 10 readings from this \$1 million camera? Where are they? Have
11 you seen the evidence? Nope. All you heard is it come out of
12 their mouths.

13 Where are the operators? Where are these three
14 other operators besides Darwin Perren? Remember Perren? He
03:31 15 said he was the only one that went up. But you hear him?
16 There were three others.

17 They didn't show up here. They were written in
18 that report, but Darwin Perren says he was the only one. What
19 they say -- just because he says it doesn't make it true.

03:31 20 The monitoring, look at Exhibit 2. The result of
21 the investigation was this: The monitoring was insufficient
22 for worker safety. Read it. That's their own conclusion.

23 Now, did they mention the alarms and all the
24 other problems they have? No. But that's one conclusion, is
03:32 25 that the monitoring system that's in place is insufficient.

03:32 1 Where are the guys from the surrounding units?
2 He can get up here and say the surrounding units have no
3 problems. Where are they? If it's true, bring them here.

4 He can talk about this anonymous call. I mean, I
03:32 5 didn't make the call. Somebody blocks their number and calls
6 me? It's crazy. They said, "Hey, there was a major problem
7 with the SRU Unit. They fixed it." Now, maybe -- I said
8 "replaced the seal." I'm sorry. Semantics. They fixed the
9 seal.

03:32 10 The Cherry Point guy, when I finally asked him,
11 he said, "Oh, yeah, there was some sand issue with the seal."
12 Come on, common sense here.

13 Leaks don't fix themselves. They continue to
14 leak. That's the problem they have. Releases, vapor, you can
03:32 15 have intermittent releases of vapor. The pressure builds up,
16 the vapor releases.

17 MR. GALBRAITH: Your Honor, there's no evidence of
18 intermittent releases in this record.

19 MR. BUZBEE: Said several times by Mr. Trapp.

03:33 20 THE COURT: Excuse me, counsel. The jury has heard
21 the evidence; and you're to rely on the evidence. My
22 admonition and instruction earlier regarding the evidence in
23 the case is that lawyers are not giving you evidence. So,
24 they're arguing; and the lawyers are to argue within the
03:33 25 confines of the evidence.

03:33 1 MR. BUZBEE: Yes, sir.

2 THE COURT: Let's proceed.

3 MR. BUZBEE: The evidence was this. The lawyers for
4 BP told the wind guy, the wind data guy, to focus on 8:45 to
03:33 5 9:00. That was the evidence. The wind from 8:45 to 9:00,
6 after people were already getting sick and coming off the
7 tower, shifted -- started from the southeast. The wind before,
8 from their own wind data, was from the north. This is how the
9 case has been defended. It was -- from the very beginning, you
03:33 10 can read it, they circle the wagons.

11 BP has a tortured history, and it continues.
12 Somebody can sit in front of you, stand in front of you, and
13 say, "We're a good neighbor." But if you live right next to
14 BP, I promise you, you wouldn't agree.

03:34 15 In September of 2009, BP, they found -- OSHA
16 found 260 continued violations, violations that are from the
17 big ISOM that have never been fixed, 260, and then found an
18 additional 439. And I'm not talking about -- you know, I know
19 how OSHA can be nitpicky. I understand. We're not talking
03:34 20 about that.

21 We're talking about failure to inspect, failure
22 to maintain, failure to repair, and failure to replace, 439 new
23 ones and 260 some-odd ones that they had never fixed, to begin
24 with. Even though a lot of people had a lot of trouble and a
03:34 25 lot of families were impacted, BP simply disregarded.

03:34 1 Now, responsibility. Even after all this three
2 weeks, they refuse to accept responsibility. And now it's in
3 your hands. Please don't make the three weeks we were here
4 mean nothing. Please don't do that. Make them take
03:35 5 responsibility for what they've done here. Thank you.

6 THE COURT: All right. Thank you very much, counsel.

7 Ladies, let me just bring one matter to your
8 attention that I failed to bring to your attention prior to the
9 arguments.

03:35 10 You'll receive the exhibits and the exhibit list,
11 and you'll see that Exhibits 247 through 260 on the plaintiffs'
12 exhibit list have been admitted. And I'm obligated to tell you
13 this: They were admitted not for the truth of the matters that
14 are stated; that is, these are some statements of some of the
03:35 15 people at or around the plant.

16 These documents are not being admitted as to the
17 truth of the matters asserted but simply as evidence of notice
18 to BP concerning the workers' complaints. That's how they're
19 to be used.

03:35 20 So, you would not go through reading them,
21 saying, "This has got to be true." You take it as simply the
22 plaintiffs' statement that this is notice that BP had
23 concerning the workers' complaints.

24 Ladies, let me ask you to retire to the jury
03:36 25 room. The first thing you want to do is select one of your

03:36 1 number to serve as the foreperson. That person will direct and
2 guide and orchestrate you through the discussion process.

3 And, of course, we have then -- we did find the
4 note forms that if you have a question you need to -- that we
03:36 5 need to respond to, that the Court needs to respond to, you
6 write it on the note. And please keep those notes in order so
7 that we'll know when -- by number which -- if you do need that,
8 what number it is.

9 I will not permit you to work past 5:00 o'clock
03:36 10 because it just gets dark too soon. So, whatever work you do
11 this evening or if you choose to recess now and go home, that's
12 your business. You can call your own shots.

13 I'm going to ask you, however, that if you are
14 not completed with your work this evening that you certainly
03:36 15 return tomorrow morning no later than 9:00 o'clock. And the
16 building is open certainly prior to that. But you certainly
17 have a schedule that we followed. I hope you'll follow that
18 same schedule.

19 All right. Ladies and gentlemen, retire to the
03:37 20 jury room. I said "gentlemen." Ladies, retire to the jury
21 room.

22 *(Proceedings recessed for evening)*

23 * * * * *

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COURT REPORTER'S CERTIFICATION

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled cause.

Date: January 25, 2010

/s/ Cheryll K. Barron

Cheryll K. Barron, CSR, CMR, FCRR
Official Court Reporter